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MONTANA LEGISLATIVE HISTORY

Chapter 595 19 93

Bill H _____ S 401 Original bill & history ____C

H. Committee on Natural Resources		S. Committee on Natural Resources	
Hearing Date(s) Apr 02	✓C	Hearing Date(s) Feb 12	✓C
Apr 12	✓C	Mar 26	✓C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out Apr 13	✓C	Mar 26	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SB 400 INTRODUCED BY NATHE

CREATE IMMUNITY FROM SUIT FOR CONSERVATION DISTRICT SUPERVISORS

2/15	INTRODUCED		
2/15	REFERRED TO JUDICIARY		
2/15	FIRST READING		
2/19	HEARING		
2/22	TABLED IN COMMITTEE		

SB 401 INTRODUCED BY MCCLERNAN, ET AL.

AMEND WATER QUALITY LAWS

2/15	INTRODUCED		
2/15	REFERRED TO NATURAL RESOURCES		
2/15	FIRST READING		
2/16	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/20	FISCAL NOTE RECEIVED		
2/22	FISCAL NOTE PRINTED		
3/27	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/29	2ND READING PASSED AS AMENDED	26	22
3/30	3RD READING PASSED	29	21
	TRANSMITTED TO HOUSE		
3/31	REFERRED TO NATURAL RESOURCES		
3/31	FIRST READING		
4/02	HEARING		
4/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/14	2ND READING CONCURRED AS AMENDED	58	41
4/14	3RD READING CONCURRED	57	42
	RETURNED TO SENATE WITH AMENDMENTS		
4/19	MOTION FAILED TO NOT CONCUR IN HOUSE AMENDMENTS ON 2ND READING	21	29
4/19	2ND READING AMENDMENTS CONCURRED	30	20
4/20	3RD READING AMENDMENTS CONCURRED	31	19
4/23	SIGNED BY PRESIDENT		
4/24	SIGNED BY SPEAKER		
4/24	TRANSMITTED TO GOVERNOR		
4/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 595		
	EFFECTIVE DATE: 04/29/93		

SB 402 INTRODUCED BY TOWE, ET AL.

AUTHORIZE ISSUANCE OF TREASURE STATE ENDOWMENT BONDS

2/15	INTRODUCED		
2/15	REFERRED TO TAXATION		
2/15	FIRST READING		
2/16	FISCAL NOTE REQUESTED		
2/20	FISCAL NOTE RECEIVED		
2/22	FISCAL NOTE PRINTED		
3/09	HEARING		
3/12	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/13	2ND READING PASSED	47	0
3/15	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
3/17	REFERRED TO APPROPRIATIONS		
3/17	FIRST READING		
3/29	HEARING		
3/30	TABLED IN COMMITTEE		

Opening Statement by Sponsor:

Senator Henry McClernan, Senate District 34, said SB 401 is a compromise bill but the law needs to be clarified. He added whatever comes out of SB 401 and SB 388 will affect everyone who discharges anything into any water.

Proponents' Testimony:

Dan Fraser, chief of the Water Quality Bureau, Department of Health and Environmental Sciences (DHES) said the purpose of the Water Quality Act's nondegradation policy is to protect Montana's ground and surface waters whose quality is higher than the established standards (Exhibit #1). He said the department would have to review degradation authorization every 5 years.

Alan Joscelyn, a lawyer from Helena, said his practice includes substantial involvement with water quality issues. He presented written testimony with his suggested changes (Exhibit #2).

Bill Bucher, a water quality professional representing himself, said the present system of nondegradation is not a system at all. He thinks SB 401 would be a better process for implementing nondegradation.

Opponents' Testimony:

Mona Jamison, representing Mikelson Land Co., said her client has been developing land adjacent to the Stillwater Mining Co. She said they are very strongly opposed to SB 388 and moderately opposed to SB 401. Regarding SB 388, she said the fundamental issue is whether or not Montana should maintain and protect high quality waters. She cautioned the committee to consider the long term ramifications of SB 388. Ms. Jamison said last year there were 4 major applications for nondegradation waivers presented to the Board of Health, and two major proposed mining operations received waivers. She directed the committee to page 9, line 10 of SB 388, suggesting this language sets off a balancing test between necessary economic and social development versus the maintenance of high quality water. According to SB 388, Ms. Jamison said, degradation allowed "in the area" only, does not recognize that many state waters have other significant uses such as agriculture and recreation. Ms. Jamison said SB 388 denies the right of downstream users to get high quality water, and benefits the headwaters, especially if the guiding principal is to allow degradation. Ms. Jamison said SB 388 shifts the burden and cost of treatment away from the polluter or the discharger onto people who have had absolutely no role in causing that degradation. Ms. Jamison said the most objectionable aspect of the definition of degradation on p. 2 is that for any statistically significant reduction to be apparent, lengthy,

quantitative water records must be available. In reality, such records rarely, if ever, exist. She said one of the more significant problems with this bill is on p. 3, lines 1 and 2, where degradation is defined to not include changes in water quality that occur within a mixing zone. Ms. Jamison discussed her opposition to mixing zones, stating that they constitute a permit to pollute. She stated that on p. 8, section 4, line 10, SB 388 proposes to eliminate the nondegradation policy as it now exists in the state of Montana. Ms. Jamison said SB 388 eliminates, as a public policy, the inherent value of high quality waters.

Ms. Jamison said she would like to make a couple comments on SB 401. She said she thinks the Statement of Intent is an appropriate and judicious statement of public policy. Ms. Jamison discussed her problems with the administrative procedures established in SB 401, stating she does not believe the Board of Health can grasp technical material after a two to six hour presentation every six to eight weeks. She said there are two reasons she opposes SB 401. The mixing zones are the same in both bills and she suggested that this bill could be improved with amendments to the mixing zone language. Ms. Jamison said she would be surprised if SB 388 is compatible with the federal Clean Water Act. She believes SB 401 provides an opportunity for applicants to get the projects and get a waiver.

Linda McMullen, cattle rancher on the Boulder River downstream from a proposed large hard rock mining operation, spoke on behalf of herself. She said in the quest for economic development, clean water must be recognized as the most valuable natural resource. She urged the Committee to vote no on SB 388 and SB 401. Ms. McMullen said SB 401 might be acceptable with the amendments Ms. Jamison suggested.

Stan Bradshaw, Montana Trout Unlimited, said SB 388 violates the fundamental premise of water protection, maintenance and improvement.

Regarding SB 401, Mr. Bradshaw said there are a number of good things in the bill, but there are still problems with mixing zones. Mr. Bradshaw said SB 401 represents a net concession of simple economic interest versus the larger public interest of protecting our water quality. Mr. Bradshaw stated the complexity of nondegradation issues defy a reasonable solution in the legislature. He urged the Committee to either table or kill both of these bills and authorize an Environmental Quality Council study over the biennium to determine if both sides can reach some consensus on how to approach the issue.

Paul Hawks, rancher from Melville, speaking on behalf of the Northern Plains Resource Council (NPRC), said he is opposed to both SB 388 and SB 401. Because he didn't see SB 388 until late the night before, Mr. Hawks focused his testimony on SB 401. While the Department of Health and Environmental Services (DHES)

says SB 401 clarifies the nondegradation petition process, Mr. Hawks stated he thinks SB 401 will gut the intent of the nondegradation policy. Mr. Hawks said SB 401 does not provide protection of pristine waters as the present statute does and Section 3 completely changes the intent of protecting existing water uses. Mr. Hawks said it is not clear if the mixing zones are subject to nondegradation regulations, and he finds the Statement of Intent to be full of loopholes. Mr. Hawks added if routine exemptions are allowed in pristine headwaters and other upstream locations, there will eventually be a cumulative effect downstream. He urged the committee to reject SB 401. Mr. Hawks distributed a copy of a letter to Governor Racicot outlining the complexity of nondegradation policy (Exhibit #3).

Senator Bianchi said it had been suggested the Committee authorize an Environmental Quality Council (EQC) study of nondegradation issues. Mr. Hawks said NPRC suggested that as a possible option.

Bruce Farling, representing the Clark Fork-Pend Oreille Coalition, presented written testimony opposing SB 388 (Exhibit #4).

Diane Moore, Sweetgrass County, said these bills will weaken the existing Water Quality Act. She asked the Committee to vote no on SB 388 and SB 401.

Jean Clark, cattle rancher on the Boulder River, and vice chair of NPRC, said NPRC's philosophy is responsible land stewardship. She said she does not support either SB 388 or SB 401, as she believes neither to be in the spirit of good stewardship or the wishes of most Montanans.

Farwell Smith, Big Timber rancher, said the community depends heavily on the high quality of the Boulder River and he opposes SB 388. He said the existing statute strongly protects Montana's high quality of water.

Brian McNitt, Montana Environmental Information Center (MEIC) said MEIC believes SB 388 and SB 401 are asking the legislature to significantly change Montana's 20 year policy to protect and improve water quality. The current water quality act and state policy are working to both protect water, and allow reasonable impacts from developments. Mr. McNitt said Montana's social and economic future depend on clean, nondegraded water, and MEIC believes there is no reasonable compromise on this issue. Mr. McNitt urged the Committee to reject both SB 388 and SB 401 and stated he would support an EQC study on this issue.

Jim Richard, Montana Wildlife Federation (MWF), said his organization opposes both SB 388 and SB 401. He added MWF commends DHES for trying to come up with a bill that would deal fairly with this process.

Questions From Committee Members and Responses:

Senator Doherty asked Mr. Joscelyn if mining companies could still operate profitably by treating water to meet the nondegradation standards without getting the exemption.

Mr. Joscelyn said the determining factor is what the best treatment method is for the situation. The Board of Health adopted the department's technical staff's recommendation on what was the maximum level of nitrate that could be allowed without having any impact on the river. A mining company had previously asked for permission to change the ambient quality in the East Boulder River up to 3 1/2 parts per million nitrate. The department recommended that no more than 1 part per million be allowed because that is 1/10th of the health standard. The options were active high-tech treatment or land application treatment. The Board opted for the land application treatment over the high-tech method because there were other environmental impacts to the high-tech option.

Senator Weeding asked the sponsors what prompted them to bring this legislation, and asked what the compelling reason was to do anything.

Senator Swysgood said he understands that the current policy on the book is determined by rule, and there is no set policy on nondegradation.

Senator McClernan said he would agree with Senator Swysgood and said there is evidence that the federal government will get involved. He asked Mr. Fraser to address Senator Weeding's question.

Dan Fraser, DHES, said the biggest reason is the policy applies to activities that degrade waters, and not specifically to industry or to the hard rock mining portion of industry. Mr. Fraser said the policy applies to municipalities, publicly owned treatment works, subdivisions, septic tanks and drain fields.

Senator Weeding asked why the Water Quality Bureau did not commence a process involving the public and develop some legislation to consider rather than having private groups develop something that fits their best interest but may or may not be in the public interest. Mr. Fraser said SB 401 is the department's legislation.

Senator Grosfield asked if the department, under SB 401, could do an adequate job of protecting the health and economy of Montana. Mr. Fraser said yes, given the resources. He added there is a bill in House Taxation which is designed to give them the authority to charge fees. The biggest reason a nondegradation policy has never been implemented is because no funding for personnel has been provided to do the job. Senator Grosfield asked about the budget. Mr. Fraser said SB 401 allows DHES to

determine activities that do not cause significant degradation. He estimated that it would cost $250,000 to $300,000 to do nondegradation reviews.

Senator Doherty asked Mona Jamison to respond to that and asked both sponsors if it was their intent that SB 388 or SB 401 affect current litigation.

Ms. Jamison said SB 388 would gut the litigation involving Stillwater Mining Company. She said SB 401 would have some impact, but not as much as SB 388. Ms. Jamison said the existing law works and two projects have received waivers. She said she is not suggesting that the rules do not have to be changed and clarified.

Senator Doherty said Senator McClernan should hope the department will not use SB 401, should it pass in any form, as an attempt to influence any ongoing litigation. Senator McClernan said he hopes the department would not try to apply any legislation to a situation like that.

Senator Swysgood noted SB 388 does not have an effective date which means it becomes effective October 1.

Closing by Sponsor:

Senator Swysgood said no one wants to see the water degraded. He said SB 388 attempts to develop a policy that addresses all of the concerns. He said this is a contentious and controversial area, but very important to everyone.

Senator McClernan closed on SB 401. He said the Committee has been presented with 3 or 4 options. He added he thinks the EQC study would take a couple years or longer, but the Committee should give some thought to all the options.

HEARING ON SB 280

Opening Statement by Sponsor:

Senator Lorents Grosfield, Senate District 41, said SB 280 is the result of the state water planning process. He described the bill to the Committee, stating it is a significant change in Montana water law and should be looked at seriously.

Proponents' Testimony:

Karen Fagg, representing Governor Racicot's office, expressed the governor's support for SB 280, noting he believes it is a well thought out, well compromised bill. She said interest in SB 280 was very high, as was the belief in the need to develop a

ROLL CALL

SENATE COMMITTEE Natural Resources DATE 2/17/93

night meeting

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	X		
Sen. Hockett	X		
Sen. Bartlett	X		X
Sen. Doherty	X		X
Sen. Grosfield	X		X
Sen. Keating	X		
Sen. Kennedy	X		
Sen. Swift	X		
Sen. Suvsgaard	X		
Sen. McClernan	X		
Sen. Tveit	X		
Sen. Weeding	X		
Sen. Weldon	X		

Fcs

Attach to each day's minutes

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES'

TESTIMONY ON SB 401

The purpose of the Water Quality Act's nondegradation policy is to protect state waters, both ground waters and surface waters, whose quality is higher than the established standards.

This policy, if implemented, will protect state waters from the increased degradation or worsening of water quality which is the ultimate result of increased development, population growth and the corresponding discharge of an increasing quantity of wastes into our finite water resource.

The philosophy is simple and appropriate. Simply put, it is to ensure that future generations enjoy the same quality waters we now have. It means, however, that we have to rethink our accepted practices of using waters as sewers, as places to dispose of wastes and as a vehicle to transport wastes away from us, which is, unfortunately, toward someone else. Not everyone can live upstream.

The philosophy is simple - implementation of the policy is <u>not</u>. The more you study the policy and consider the many alternatives, and the innumerable possibilities, the more aware you will become of just how difficult implementation really is. The more you think about the consequences of not implementing a stringent nondegradation policy, protective of water quality, the more convinced you will become that implementation is crucial to the future of the state.

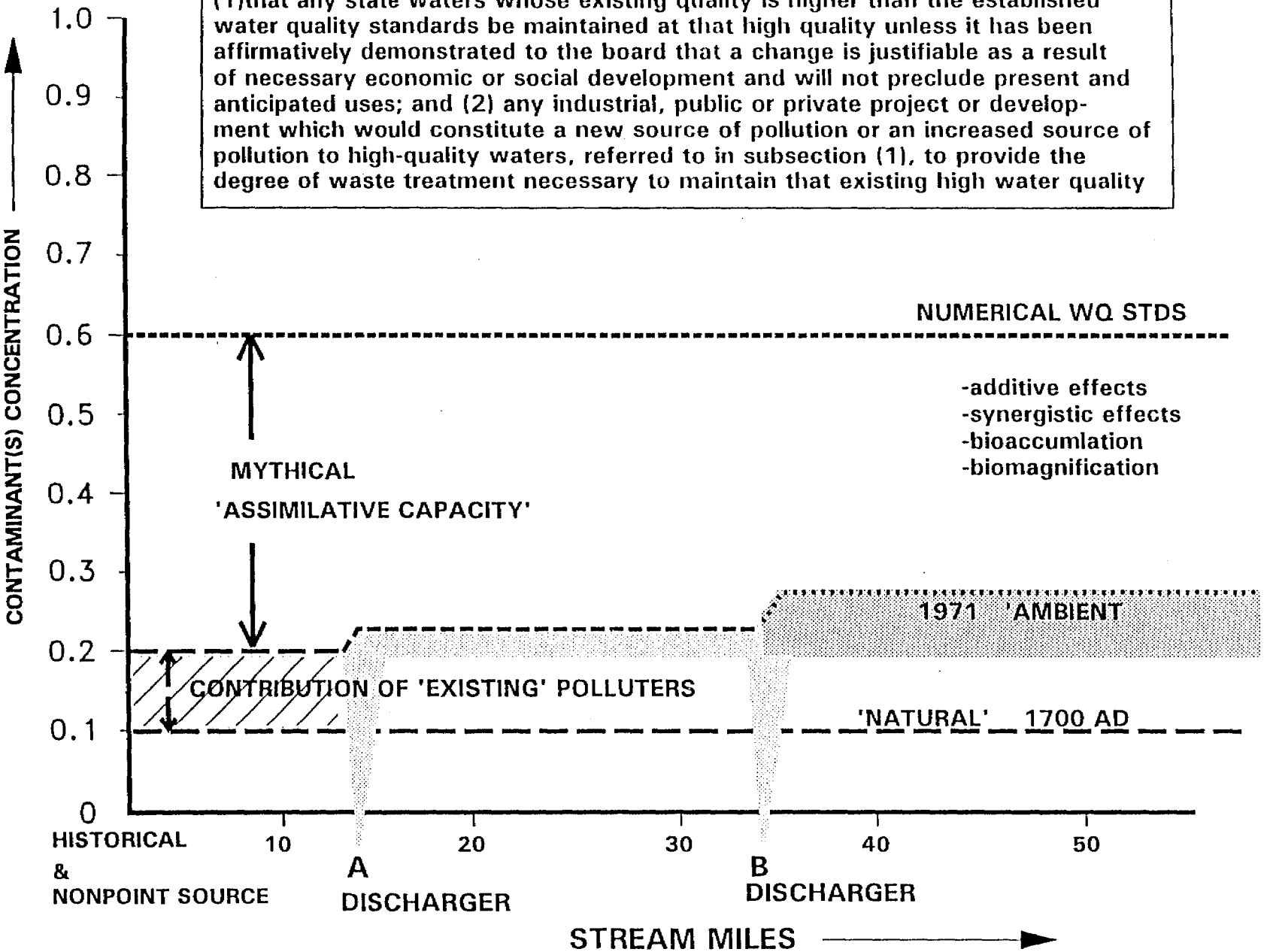
The department has worked for the past several months to develop SB 401. The bill is summarized fairly well by lines 3 - 13 on page 2 of the STATEMENT OF INTENT.

> *"In recognition that certain activities promote general welfare and may justify lower water quality in a particular water segment, the legislature intends that degradation be allowed in limited circumstances and under certain conditions. For example, if there is no alternative to a proposed project that does not result in degradation and the project is found to be in the best interests of the state, degradation may be allowed provided that water quality protection practices are implemented to the extent determined to be economically and technologically feasible."*

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2/17/93
BILL NO. SB 401

NONDEGRADATION POLICY. The board shall require:

(1)that any state waters whose existing quality is higher than the established water quality standards be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated uses; and (2) any industrial, public or private project or development which would constitute a new source of pollution or an increased source of pollution to high-quality waters, referred to in subsection (1), to provide the degree of waste treatment necessary to maintain that existing high water quality



SUMMARY OF DHES' NONDEGRADATION BILL

EXHIBIT #1
DATE 2-17-93
SB-401

75-5-103. Definitions.

(4) "Degradation"

The purpose of applying nondegradation review is not to totally prohibit degradation, but it does require a mandatory evaluation of alternatives that may result in less degradation or no degradation. This parameter-by-parameter approach affords the greatest protection to state waters. It essentially makes all state waters "high quality" for some or all parameters, therefore, applying the policy to all waters and 'writing off' none. The weasel wording here is in reference to changes that are determined to be "nonsignificant". All activities of man cause some degree of water pollution and it is clear that a full nondegradation review cannot be conducted on all of them, therefore, we have to get some of them out of the process in order to make it workable.

(8) "Existing uses"

Existing uses are the bottom line in terms of how far degradation can go (see 75-5-303 (1), new language).

(9) "High quality waters"

Again, as in (3) above, this serves to clearly show all waters are protected by the nondegradation policy with the same caveat regarding nonsignificance.

(11) "Interested person"

The interested person definition limits those who can appeal the department's preliminary decision.

(13) "Mixing zone"

Mixing zones are a part of the current operating practice when permits are issued. When an effluent is discharged to a receiving water of higher quality it can't be mixed instantaneously, therefore, there is a mixing zone. The only way we know of to avoid this is to have the effluent identical in all respects (parameters) to the receiving water. Practically, this is not possible.

(25) "Water quality protection practices"

We, in our nondegradation policy review and development over the past 1 1/2 years, decided to put in this definition in an effort to include all activities that could potentially be required as conditions of authorization to degrade state waters. The intent is to apply the "least degrading water quality protection practices economically and technologically feasible" (see 75-5-303 (3) (d)) as a condition of allowing an applicant to degrade state waters.

75-5-301. Classification and standards for state waters.

(4) & (5).

These sections are to give the board the authority to adopt rules governing mixing zones and implementing the nondegradation policy.

(4) a, b & c are intended to minimize the impacts of allowing mixing zones.

(5)(a) allows the board to adopt rules for department review and authorization of degradation.

(5)(b)(i) & (ii) allow for rules to determine; 1. important economic or social development and, 2. weighing the cost/benefit to society.

(5)(c) provides for rules by which the department would determine what activities would result in "nonsignificant" changes.

***75-5-303 Nondegradation policy.** This is the heart of the issue. We have made our best effort to determine what the 2 conflicting subsections really mean and have rewritten the policy to clarify that meaning and expand it in a manner consistent with the rest of the Water Quality Act (WQA).*

(1) This subsection establishes the "bottom line". Existing uses must be protected and maintained; no exceptions. To not maintain all existing uses would cause violations of the water quality standards and this is expressly prohibited by the WQA.

(2) This subsection tells us the only way to degrade high quality waters is to get authorization from the department.

(3) Details when and how degradation can be allowed.

EXHIBIT 11
DATE 2-17-93
SB-401

(a) a showing would have to be made that no technologically and economically feasible alternatives are available that would not degrade state waters. Obviously economics come into play here. When EPA makes these kinds of determinations they typically look at things which are "generally affordable" to a particular kind of industry or development. If it is generally affordable, it would be required regardless of the individual financial circumstances of the applicant.

(b) a 'balancing' would have to be made showing the benefit to society from allowing the development to go forward exceeds the cost of losing, to the extent authorized by the department, the high quality water. This should be examined, we believe, on a state-wide basis rather than just by looking at the benefit to the local area. The constitution gives ownership of the waters to the state, so this seems appropriate to us.

(Establishing criteria and making these kinds of determinations are, to some extent, subjective in nature and more easily said than done.)

(c) a determination would have to be made that, if the authorization to degrade were granted, existing and anticipated uses would be fully protected.

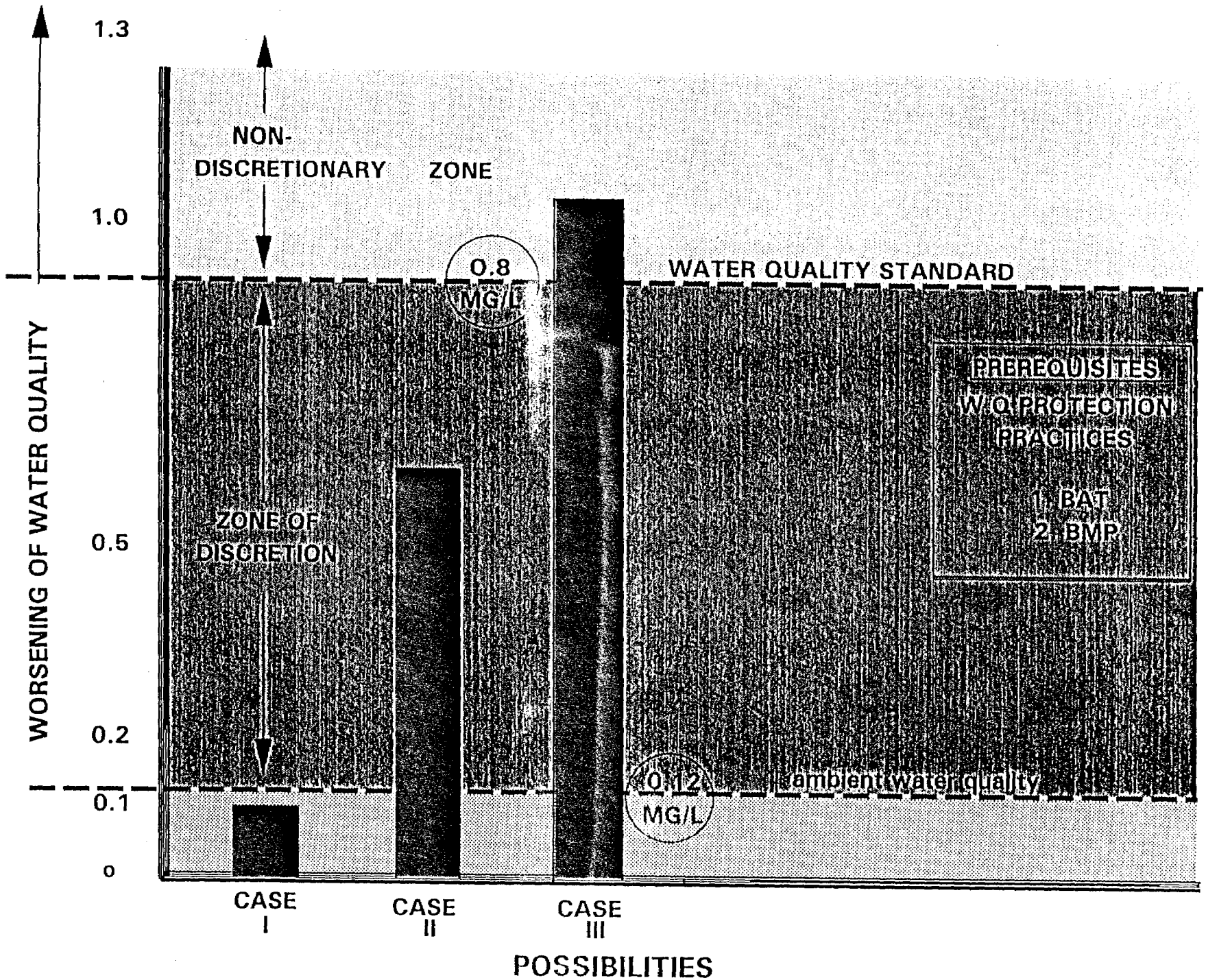
(d) and, as mentioned earlier, the least degrading water quality protection practices determined by the department to be economically and technologically feasible would have to be in place as a condition of authorizing the degradation.

(4) This is a procedural issue.

(5) This section allows challenges to the department's decisions.

(6) This section requires the department to revisit the authorization every five years. It would be possible that, upon a five year review, the department would determine a higher level of technology or some other water quality protection practice would have to be put in place. If uses were shown to be impaired the authorization would have to be withdrawn or conditions would have to be applied which would correct the problems.

75-5-605. Prohibited activity. *(c) This clearly makes it prohibited to degrade state waters without getting the authorization pursuant to 75-5-303.*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CASE
I
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III
POSSIBILITIES

EXHIBIT #1
DATE 2-17-93
SB- 401

EXPLANATION OF "POSSIBILITIES" GRAPH

CASE I:

Minimum treatment requirements and best management practices are sufficient to produce an effluent which does not degrade the receiving water.

Nondegradation is not an issue.

CASE II:

Minimum treatment requirements and best management practices are <u>not</u> sufficient to ensure no degradation of the receiving water occurs. The nondegradation review process would be triggered. The applicant would have to:

1. *show that the degradation is necessary because there are no economically and technologically feasible alternatives which would result in no degradation;*

2. *show the proposed project will result in important economic or social development that exceeds the benefit to society of maintaining the existing high-quality waters;*

3. *the department will have to be satisfied that uses will be protected; and*

4. *the least degrading water quality protection practices economically and technologically feasible will have to be implemented.*

CASE III:

In this example water quality standards are violated after minimum treatment and after water quality protection practices. The activity could not be authorized by the department.

Dan L. Fraser

Dan L. Fraser, P.E., Chief
Water Quality Bureau

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 2/17/93
BILL NO. SB 401

SENATE BILL 401

Testimony of Alan Joscelyn

Senate Natural Resources Committee
February 17, 1993

I am a Helena lawyer whose practice includes substantial involvement with water quality issues. During the past three years, I have represented several clients in proceedings with the Montana Department of Health and Environmental Sciences regarding Montana's nondegradation statute.

My comments on SB 401, which are based on the experience I have had in this field, are as follows:

Statement of Intent:

Page 1, line 22: Add "high quality" following "of". The intent of the policy is to maintain the quality of high quality waters, i.e., waters whose existing quality is higher than water quality standards. Waters which are not of "high quality" are protected in terms of existing uses, not in terms of quality per se.

Page 2, line 7: Add "economically and technologically feasible" following "no". This change is necessary to make the Statement of Intent consistent with Section 3 of the bill, and to avoid confusion later as to the Legislature's intent.

Page 3, line 5: Add "to the extent possible consistent with the necessity for allowance of mixing zones" following "minimized". This is necessary for consistency with Section 2, and to avoid later questions as the Legislature's intent.

Section 1:

Page 4, line 10: The proposed definition is not acceptable. This definition includes all waters of the state, including those which do not meet anyone's common-sense definition of high quality water. For example, it would include waste waters such as sewage and all process and waste-waters from industrial processes. The Environmental Protection Agency's Region VIII office has made it clear, in its most recent guidance document, that Tier 2 nondegradation protection (protection based on assessing changes in parameters for which standards have been set) is not meant to apply to waters which are not fishable or swimmable. Rather, those waters are protected instead by protecting existing uses and the quality

necessary to support those uses. This proposed definition obliterates the intended distinction between high quality and low quality waters, in terms of how they are protected.

A better approach would be to adopt a definition along the lines proposed in SB 388, which makes a factual distinction between high and low quality waters. Another alternative is to simply define high quality waters as those whose quality is such that the water is suitable for swimming or support of a salmonid fishery. This definition is simple, it is compatible with EPA guidance and meshes well with Montana's already-adopted water classification system.

Page 5, Line 15: Add ", for which water quality standards have been adopted," following "water". This change is necessary to ensure that agency review and proceedings are limited to changes in parameters which have been recognized as meaningful in terms of water quality.

Section 3:

Page 10, line 5: add " or Board" following "department". This change is necessary to reflect the right of appeal, and the fact the Board will be the final decision-maker in the event of an appeal.

Page 10, line 6: Add ", (4) or (5)" following "(3)". This change is necessary, again, to reflect the right of appeal and that the Board may make the final decision.

Page 10, line 8: Add: "or Board" following "department". Same reasons as foregoing change.

Page 10, line 10: Delete: "to the department" following "demonstrated". Same reason as foregoing change.

Page 10, line 15: Delete remainder of sentence following "development". This decision regarding important economic or social development necessarily requires a determination that the benefits of the project exceed the benefit of maintaining the water quality at its present level. Accordingly this is redundant. Worse, the term "society" is undefined and could create problems.

Page 10, Line 22: Add the following new sentence at the end of the subsection: "In determining "least degrading" and economic and technological feasibility, the department (or the Board, on appeal) will consider the environmental impacts of the various alternatives analyzed.

EXHIBIT #2
DATE 2-17-93
SB-401

Page 10, Line 20: Delete "by the department". This change is to reflect the right of appeal to the Board, and the fact the Board may make the final decision on appeal.

Page 11, Line 4: Add the following new sentence following "decision.": "In the event of an appeal, the Board will make its own determination of the issues raised by the appeal." This change is necessary to clarify what the Board's role will be in determining an appeal.

Page 11, Line 11: Add the following new sentence at the end of the subsection: "Any decision by the department under this subsection is subject to appeal to the Board as set forth in subsection (5)."

Northern Plains Resource Council

January 12, 1993

Marc Racicot, Governor
Governor's Office
State Capitol Bldg.
Helena, MT 59620

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2/17
BILL NO. SB 388
401

Dear Governor,

On behalf of the Northern Plains Resource Council (NPRC), I would like to thank you for meeting with our Legislative Task Force on December 12th. Our members appreciated the effort you made to meet with us, as well as your openness on the issues of concern to the NPRC and other Montanans. Your willingness to consider our views is a refreshing change from the previous administration. We look forward to building on this open relationship throughout your tenure in office.

NPRC would like to offer you our perspective on current efforts by the Department of Health and Environmental Sciences (DHES) to draft legislation that would substantively weaken the Montana Water Quality Act. We have reviewed a draft of the Department's bill, and attended a meeting sponsored by DHES to explain the bill. NPRC believes that the bill would seriously jeopardize the Water Quality Act's current protection of Montana's pristine water resources; that the bill may be unconstitutional; and that it would divert the Department's time and energy away from developing solutions to several crucial implementation problems that cannot be solved effectively through legislation. NPRC therefore asks you to consider withdrawing the support of the Governor's office from the Department's efforts to draft this misguided legislation. We urge you to refocus the Department's current efforts from "clarifying" the nondegradation policy through what is likely to be controversial and polarizing legislation, to clarifying and working towards a consensus on the policy through rulemaking and an interim study. Such efforts could focus on:

1) the Department ensuring that applicants for nondegradation exemptions fully develop treatment options preventing degradation;

2) the Department mandating (i.e., not leaving it discretionary) that a thorough cost-benefit analysis is developed on treatment options preventing degradation versus options allowing degradation;

3) the Department ensuring the actual permit conditions--including the proposed treatment methods and monitoring plans--being proposed for a degradation exemption are made available with reasonable time for public review prior to the hearing;

4) the Department developing a plan and appropriate agency policies needed to apply the nondegradation policy for those polluting activities currently exempted from having to obtain groundwater discharge permits;

5) the Department developing a plan and appropriate agency policies to apply the nondegradation policy to nonpoint sources of pollution--including procedures for determining how nonpoint sources will be required to implement best management practices upstream from where degradation exemptions are granted as required by state and federal rules;

6) the Department identifying ways to increase its capacity to meet its current statutory obligations to ensure effective enforcement of the Water Quality Act--and in particular the nondegradation policy; and,

7) the Department exploring the possibility of supporting a resolution for an interim legislative study by the Environmental Quality Council to try to develop some consensus on how the nondegradation policy should be implemented, and whether any legislative changes may be needed to more effectively implement the policy.

The following points provide more background and arguments for the course outlined above.

Suite 419 Billings, MT 59101-2092 (406)248-1154

1) The Department's draft bill would abandon the State of Montana's existing philosophy of not allowing degradation of essential elements of environmental life support systems--namely pristine water--as currently set forth in the Montana Water Quality Act and the Montana Constitution.

The Department's draft bill would repeal 75-5-303--the nondegradation policy--of the Water Quality Act, including 75-5-303 (2) MCA, that requires new or increased sources of pollution "to provide the degree of waste treatment necessary to maintain ...existing high water quality." The bill would replace 75-5-303 with language that would conform the Water Quality Act to DHES's current--and we believe illegal and unconstitutional--interpretation of the law that allows degradation exemptions for new or increased sources of pollution.

NPRC and others have challenged the Department's current policy of allowing new or increased sources of pollution to obtain degradation exemptions, because we believe such a departmental policy violates section 75-5-303 of the Water Quality Act. We have also argued that our interpretation of the Act is supported by the Montana Constitution's mandates that each citizen has "...the right to a clean and healthful environment..." [Article II, Section 3]; and that the state has a Constitutional duty to "...maintain and improve..." the environment, and to prevent degradation of water, a critical component of our essential environmental life support system [Article IX, Section 1].

However, both DHES and the Board of Health have maintained that they do have the authority to grant exemptions to new or increased sources. NPRC, our local affiliates, and others have raised these constitutional questions--along with other issues--in legal challenges to Chevron/Manville's proposed water degradation exemptions for mining projects on the Stillwater and East Boulder Rivers. The two exemptions have been combined into one case that is scheduled for a hearing before State District Court Judge Dorothy McCarter in January of 1994. If the Department's draft bill were to pass, its provision allowing new or increased sources of pollution to degrade pristine waters would explicitly abandon the current statutory and constitutional mandates to prevent water degradation, and may be found unconstitutional when Judge McCarter renders her decision in our case.

Since DHES and the Board of Health disagree with our interpretation, and claim to have the authority to allow exemptions for new or increased sources under current law, NPRC believes the prudent course of action would be to allow the courts to decide this issue, and then reevaluate the need for legislation once a decision is rendered. Such a decision on this and related issues could serve to clarify the true need for legislative changes for parties on all sides of these issues by *clarifying the constitutional issues that have been raised.* If DHES wins its argument in court, its proposed legislation--"to clarify" that new or expanded sources *are* eligible for exemptions--would be unnecessary, and the Department will have wasted an enormous amount of time and energy fighting for controversial legislation that we believe may only serve to polarize this issue further. If DHES loses, then the proposed legislation may well be found unconstitutional, and the Department will also have wasted time and energy in trying to pass this bill.

DHES is currently redrafting water quality rules--including nondegradation rules. DHES could move forward with its rulemaking based on its own interpretations of current law. NPRC believes that certain changes--including most being proposed in the Department's draft bill--could be made through rulemaking that could clarify the application process for exemptions. Such clarification could benefit the public, the department and applicants for exemptions. However, we believe it would be counterproductive for everyone involved to have a controversial legislative battle that can only serve to polarize this volatile issue even further, and divert everyone's limited resources into such a fight. NPRC urges you to consider refocusing DHES's limited resources into moving forward with its rulemaking, and away from drafting controversial, unnecessary, and potentially unconstitutional legislation.

2) The Department's bill fails to address another crucial problem that has plagued degradation applications to date: it does not mandate a rigorous cost-benefit analysis that thoroughly weighs the costs of alternatives allowing degradation against the costs of preventing degradation.

In all degradation petitions developed to date, the Department has refused to require the applicants to complete a *thorough* cost-benefit analysis of alternatives that could prevent degradation in comparison to alternatives that would allow degradation. There are two main reasons for this failure. First, the Department has refused to follow its own rules that--before they were changed last summer--required an applicant for an exemption to first obtain a water discharge permit with conditions preventing degradation *prior to* applying for an exemption. And, second, the Department has refused to

EXHIBIT #3
DATE 2-17-93
SB 388-401

suing authority under its rules to require applicants to do a thorough cost-benefit analysis of preventing opposed to allowing degradation. If the Department had utilized its existing authority (see ARM 16.20.704) its to provide water treatment alternatives in the environmental review that would prevent degradation--ugh cost-benefit analysis of all alternatives--then the Board of Health could have made more informed whether to grant exemptions. Such an analysis would have also provided the public with a clearer of the issues at stake.

problem with the bill is that it would base approval of water degradation exemptions heavily on whether t alternatives are "economically achievable" *for the applicant,* not on broader social and economic criteria as ovided for in the nondegradation rules [ARM 16.20.704]. Again, this language would put into statute the elieve illegal--policy of the Department to allow degradation exemptions based primarily on applicants' s that they cannot afford treatment.

nple, in the Environmental Assessment for the degradation petition on the Blue Range Mine near Department ignored public testimony urging consideration of a surface tailing impoundment as an placing cyanide-laced tailing back into an abandoned (and leaking) Gypsum mine simply because the ged it could not afford a surface impoundment. The Department did not require the company to provide any documentation to substantiate this claim. NPRC believes the current law requires the test for social and ity to be based on industry-wide, state-of-the-art treatment technologies, not on whether a certain company afford such treatment.

would significantly increase the number of exemptions without providing the t with the additional resources that would be necessary to meet the increased demands for and enforcement.

nting of degradation exemptions places a much greater burden on both the Department of Health and the State Lands to be able to ensure compliance with permit conditions that allow limited pollution of pristine t exceeding drinking water standards, and without harming existing and future beneficial uses. Neither , have demonstrated that they have the necessary resources or political will to ensure that mining comply with drinking water standards, let alone the much more rigorous monitoring necessary for ensuring with the more stringent permit conditions demanded by degradation exemptions.

ample, Noranda Minerals stands accused of violating drinking water standards during mine exploration at e site on Libby Creek in the Cabinet Mountains. Neither the company--who sent in the monitoring reports violations--nor DSL, nor DHES, acted on these detected violations for a year and half. Nevertheless, in the state granted Noranda a degradation exemption for this mining project while it was still prosecuting r the earlier violations.

is Noranda example is by no means an isolated case. NPRC researched agency files for mining violations in 1990. We found that the hard rock mining industry had been assessed over $600,000 in fines--many for olations--over the last decade. Yet we also found that the state agencies involved had only collected here 10%, of those fines by October of 1990. NPRC maintains that neither DHES nor DSL have the capacity liance with much more stringent nondegradation permit conditions, when they cannot even ensure h the less stringent water quality standards. NPRC believes that DHES is being imprudent in pushing for hat will likely increase the number of degradation exemptions, without proposing how it intends to enforce the nt permit conditions that will be required by them.

Document Shelved

nother example of DHES's lack of enforcement capabilities is the recent shelving of a draft enforcement the fall of 1991, DHES Director Dennis Iverson told NPRC and other conservation groups that he had k force made up of DHES enforcement personnel to review and make recommendations on what resources policies the Department would need to effectively enforce the public health and environmental protection laws responsible.

he Enforcement Policy Task Force" was created, and it did draft a "Regulatory Enforcement Policies and

DATE 2/17/93

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: ~~2/~~ SB 388 SB 401 SB 280

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Stan Bradshaw	MT. T.U.		280	388 401
Jay Richard	MT Wildlife Fed			388 401
Linda McMullen	Rancher NPRC			388 401
Bill Bucker	Citizen	~~401~~	401	
Janet Ellis	MT Audubon			401 388
Mona Jamieson	Milltown Land Co.			401 388
Bruce Farling	Clark Fork Coalition			388 401
Brian McIvitt	MEIC	401 388		X
Paul Hawks	NPRC	401 388		X
Scott Ringold	NPRC	" "		X
RACHAEL RAUE SIRS	FAMILY (OF 6)	388 401		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

EIC

Vote:

Motion to take executive action on HB 280 failed 5 voting yes, 8 voting no, roll call vote.

EXECUTIVE ACTION ON SENATE BILL 401

Motion:

Senator Doherty moved to AMEND Senate Bill 401 (Exhibit #12).

Discussion:

Senator Doherty said following line 22, the amendment inserts language that requires an analysis be done by someone who seeks a nondegradation exemption. He said he believes the Department's rules were good and he would feel more comfortable having it in the statute.

Mr. Sihler said this puts in evaluation criteria to degrade high quality waters.

Senator Keating asked DHES to comment. Mr. Fraser said this amendment is lifted from the rules. In the rules, DHES may require information, but he did not think the whole laundry list would apply in all cases where somebody may be seeking authorization to degrade. It has been the position of the Department that the issue is better handled in the rules.

Senator McClernan asked if in their working groups they had reviewed and talked about this language. Mr. Fraser said yes, but the group was unable to reach agreement.

Senator Hockett said he had no idea what the amendment would do to the bill and asked Mr. Fraser to comment. Mr. Fraser said he believes the amendments are not fully understood and that worries him.

Senator Doherty said if there was no reason for the proposed effluent limitation then all that needs to be done is to put in that there is none. He wants them in statute because they are in the rules and that would give the Department discretion. He said he does not want the Department to be subject to political pressure to make a decision which may not be in the long-term interest of Montana.

Mr. Fraser said DHES did not object to that, but is concerned about being backed into a corner with a requirement in a situation that is not foreseen.

Senator McClernan said he is not comfortable with these

amendments as he does not understand them.

Senator Weeding said if these are currently the rules, he does not see why DHES would oppose putting them into law. He stated there are some pretty strong requirements such as identifying the effluents and discharges. Senator Weeding said that is the sort of thing DHES should look at and account for when they grant a waiver of a standard.

Senator Grosfield said he would expect, if this bill passes the Legislature, it will mean a change in the nondegradation law, and whatever form it passes in does not matter. He said he was not sure the Legislature could put in rules that may not coordinate with everything else in the bill.

Vote:

The motion to amend SB 401 (Exhibit #12) FAILED, 5 voting yes, 8 voting no, roll call vote.

Motion:

Senator McClernan moved to RECONSIDER the vote on an amendment (Exhibit #13).

Discussion:

Senator McClernan said this amendment deals with the definition of high quality water. The amendment reflects federal law and he said he believes it is a step in the right direction.

Senator Weeding said he resists the motion because it equates water standards to a use, in this case being fish and wildlife. He added it has nothing to do with parameters and what is in the water. It would reduce the quality of water to meet those standards.

Senator Tveit said this would not reduce standards to the point where humans cannot drink the water.

Senator Grosfield said he did not feel that was the issue, as it is not a matter of degrading down to the point where fish can just barely live. This only deals with the definition of high quality water and page 10, lines 5, 6 and 7 describes the quality of water which must be maintained unless authorized by DHES.

Vote:

The motion to reconsider the amendment (Exhibit #13) CARRIED, 7 voting yes, 6 voting no, roll call vote.

Motion:

Senator McClernan moved to amend SB 401 (Exhibit #13).

Discussion:

Senator Kennedy asked for a brief explanation of the standards in 75-3-301. Mr. Sihler said there is a drafting error in the bill and a misreference. It should be 75-5-301 and if this amendment fails there should be a motion to correct that. 75-5-301 is the list of classifications for state waters.

Senator Doherty spoke against the amendment because it changes the whole thrust, definition and intent of nondegradation from protecting high quality waters to protecting uses of water. He added it is a significant weakening of Montana's water nondegradation standards and a step backward.

Senator Weeding said he does not believe the amendments offer any protection for truly high quality water and is a mediocre level.

Vote:

The motion to amend SB 401 (Exhibit #13) FAILED, 6 voting yes, 7 voting no, roll call vote.

Motion:

Senator Weeding moved to amend SB 401 (Exhibit #14).

Discussion:

Senator Weeding said these amendments would reinstate language on the bottom of page 9. He read and explained the amendments. He said this is existing law and the amendments are just putting current language back into the bill. He said this is in the context with the statement of intent and with the Constitution.

Senator McClernan asked Senator Weeding if the amendments he and Senator Doherty had are as substantive as this one. Senator Weeding said there will be more substantive amendments.

Substitute Motion:

Senator McClernan made a substitute motion that Senate Bill 401 DO PASS as it is now.

Discussion:

Senator Hockett asked if he could assume if the motion failed the bill would be dead. Chair Bianchi said if this motion fails the Committee will still have to move final action on the bill.

Senator Weeding said he does not know the real purpose of this motion. He said amendments are always entertained and he would expect the same thing be done here.

Senator Swift said he believed the motion is valid and should be voted on it's merits.

Vote:

Motion that SB 401 Do Pass FAILED, 6 voting yes, 7 voting no, roll call vote.

Discussion:

Senator Kennedy said he was concerned about waste water treatment plants in Kalispell and asked Senator Weeding to discuss this as well as mixing zones. Senator Weeding said this amendment does not deal with mixing zones or existing sources, only with new and expanded sources or uses. He said amendment #6 expands sources to include activity.

Chair Bianchi said he believed the waste water treatment in Kalispell is already grandfathered in so it would not be affected.

Senator Doherty said it was his understanding that existing sources can use the nondegradation process. Most of the testimony regarding confusion in the law refers to subsection 2.

Chair Bianchi said a waste water treatment plant is an existing source and could apply for a degradation permit.

Senator Weeding said if the Kalispell treatment plant has put in a secondary treatment system and improved its output since 1972, it has bought some leeway since the bill would only hold them to the 1972 standards.

Senator Kennedy asked what would happen if changes were made to the treatment plant. Senator Weeding said he assumed it would be affected if there was greater output, but there would still be a cushion if the plant upgraded its treatment system.

Senator Grosfield said this issue has been discussed in terms of its impact on the mining industry but this amendment does not apply specifically to the mining industry. He said the amendment would apply to mines, other industries, municipalities with run-off, agricultural producers, and septic systems. He read from amendment #2, then read from page 6 of the bill regarding the

definition of pollution. He said a society cannot function with that kind of unrealistic limitation.

Senator Keating said the amendment would preclude starting a feed lot or putting in a septic tank. Senator Grosfield said that is not quite correct, as those projects could be initiated without providing waste water treatment.

Senator Swysgood said he agreed with Senator Grosfield. It would not preclude a person from putting in a septic tank. He said the problem would be the cost of treating the water.

Senator Doherty said he believed the Committee and DHES must deal with the question. He stated it is state policy to not degrade water.

Senator Weeding reminded the Committee that language in the amendment is in current law.

Senator Grosfield said SB 401 was introduced to try to clarify confusion over the law. With this amendment, water at the end of a septic system drain field should be drinkable. This would mean putting waste water treatment at the end of every new septic tank being installed in the state of Montana. He said he did not think this was a realistic idea.

Senator Hockett asked DHES about the amendment. Mr. Fraser said if the law is interpreted to say that new or enlarged sources cannot degrade, and if the current definition of degradation is used, meaning any calculable change for any parameter, then it is impossible. He added the only way to make the amendment work would be to redefine degradation.

Senator Weeding closed on his motion by saying he does not intend to change the game plan for the existing sources, this would be for the new and expanded sources. There is not much sense in having a nondegradation policy if it will not be adhered to.

Vote:

The motion to amend SB 401 (Exhibit #14) FAILED, 6 voting yes, 7 voting no, roll call vote.

Motion/Vote:

Senator Keating moved on page 4, line 12 to change 75-3-301 to 75-5-301. Motion CARRIED unanimously.

Motion:

Senator Weeding moved to AMEND Senate Bill 401 (Exhibit #15).

Discussion:

Senator Weeding read and explained the amendments.

Senator Keating said this amendment was much the same as the previous one and felt it was a waste of time. Senator Weeding assured him it was not the same amendment.

Senator Doherty said the amendment is a very significant step backward from the present rules. This amendment says if a facility does not pollute or degrade and can prove it is for some necessary economic or social development, a permit may be issued. This is a statement of policy that backs off substantially from the previous amendment.

Senator McClernan said this amendment appears to be a stronger amendment than the one the Committee just voted down. He urged the Committee to not adopt this amendment.

Senator Hockett said he believed this amendment was weaker than the first. He suggested that the opponents of this amendment were attempting to move the quality of water back to that in the Berkeley pit.

Senator Swysgood asked for DHES's views about the amendment. Mr. Fraser said he believes the amendment contains exactly the same language that is currently in statute.

Senator Keating said the purpose of SB 401 is to allow DHES to use its expertise to preserve a level of water quality that would be enjoyable to all, while permitting activities that economically support a lot of people. The Berkeley pit is the result of 100 years of mining, but there are areas where nature has cleaned up the results of mining or people have done so. He said feed lots have been around without the water being degraded to a point less than the definition of high quality water that was offered in the bill. In a general, common sense way, people in Montana have protected their water for a long time. Senator Keating stated these amendments will make it impossible for anybody to do any economic project in Montana without having to treat the water to the extent that it must be returned to it's original state. He said the idea of the original bill was to allow certain changes in the parameters of the water, maintain it for human use, while allowing economic activity.

Senator Weeding closed on his amendment saying he did not see that the amendments placed an unrealistic obstacle in the law when they simply reinstate the language that has been in there. He said he believes SB 401 was introduced because DHES has misapplied the law and gotten into trouble. He said he thinks DHES would like to weaken the law so it fits the action they have taken.

Vote:

The motion to amend Senate Bill 401 (Exhibit #15) FAILED with 6 members voting yes, 7 voting no, roll call vote.

Motion:

Senator Weeding moved to amend Senate Bill 401 (Exhibit #16).

Discussion:

Senator Weeding read and explained the language which would strike mixing zones. He said the current definition of mixing zones has no limit, it is just a way to degrade below standards.

Senator McClernan said this is the point the proponents and opponents could not get together on. Work with DHES convinced him this is the most important point in the bill. He said if the language is removed, there will be problems for the average citizen. He urged rejection of this amendment.

Senator Kennedy asked DHES to comment on this amendment. Mr. Fraser said this amendment was discussed at length, as no degradation would be allowed for new sources. He stated mixing zones are necessary. In most cases, technology is available to meet water quality standards but if someone discharges surface water, technology is not available to avoid needing a mixing zone. There are over 200 different parameters that are constantly changing and the target is often unclear.

Senator Kennedy asked if Senator Weeding's statement that pollution would be allowed with mixing zones was correct. Mr. Fraser said no, there are minimum treatment requirements established for existing sources. He added those treatment requirements are significantly less than the water quality protection practices being discussed for new or enlarged sources in SB 401. Most existing sources of publicly owned treatment works have to apply secondary treatment. Mr. Fraser stated this is a long way from meeting water quality standards, but a lot better than they were 15 or 20 years ago.

Senator Kennedy asked if he could get an estimate of how much more it would cost a city to build a treatment plant if there were no mixing zones. Mr. Fraser said discharging surface water in a publicly owned treatment works would not be possible given the way degradation is being viewed, parameter by parameter, with any calculable change.

Senator Keating said he believed the key thought in the mixing zone is that it is only a temporary situation. It is a concentration for a short duration and then dilution restores water to its higher quality.

Senator Hockett asked if Senator Keating's statement would be correct if the discharge included heavy metals. Mr. Fraser said the mixing zone is designed to be small in size, but not necessarily temporary in terms of time. If the discharge is continuous, then the mixing zone would be continuous.

Senator Hockett said he assumes the nature of the mixing zone would depend on what is being discharged, adding the arsenic levels on the Missouri are not temporary. Mr. Fraser said that is true, some things biocumulate and biomagnify, and those kinds of things can get worse. That is why, in the guidance and consensus amendments, criteria was established to show how to handle those kinds of things.

Senator Bartlett said Mr. Fraser had talked about mixing zones in relation to surface water, and asked him to address mixing zones in relation to ground water. Mr. Fraser said ground water moves slower, so there is not as much of a changing target, and changes are much less significant.

Senator Weeding said ground water is not covered under the Clean Water Act and the only protection ground water has is the state water act. He added there is no federal protection for ground water. Mr. Fraser said that is true unless ground water is hydrologically connected to surface water.

Senator Weeding said the amendment would not prevent mixing zones, it would only prevent mixing zones that violate water quality standards.

Vote:

The motion to amend Senate Bill 401 (Exhibit #16) FAILED, 6 voting yes, 7 voting no, roll call vote.

Motion:

Senator Weeding moved to amend Senate Bill 401 (Exhibit #17).

Discussion:

Senator Weeding read the amendment and explained it to the Committee.

Senator Grosfield said this amendment is the same as the last the Committee considered. He said mixing zones will not be possible with this amendment.

Senator Doherty said he believes this to be a significant departure from the last amendment. He stated with this amendment, degradation and pollution would be allowed if the

operation has necessary economic and social impacts. But in the mixing zone, however DHES defined it, water standards could not be violated. Senator Doherty said he believes this is necessary to tighten up the whole idea of mixing zones, but does not think polluting below the water quality standards should be allowed anywhere in Montana.

Senator McClernan said he agrees with Senator Grosfield and asked Mr. Fraser if these amendments eliminate mixing zones. Mr. Fraser said the amendments allow mixing zones, but prohibit violation of water quality standards. He said for many current dischargers, that is technologically possible, but costly. Mr. Fraser added in some cases it would not be possible.

Senator Doherty asked if DHES would require tertiary treatment if it was determined, after looking at the economic analysis, that a mixing zone should be expanded. Mr. Fraser said if the effluent does not meet water quality standards, there would have to be a mixing zone that violates water quality standards.

Senator Doherty asked Mona Jamison if she had a comment. Ms. Jamison said with mixing zones, sewage treatment facilities in some instances will provide tertiary treatment and in others will not. She stated in looking at the rules, the mixing zone should be the smallest practicable with the smallest practicable impact on uses. Ms. Jamison said practicable has been determined by DHES to be really quite large, and she urged the Committee to consider how this relates to mining. At the present time, DHES does not prescribe the mixing zones for mining, as the Department has delegated that duty to the Department of State Lands (DSL). DSL has determined that mixing zones are the size of the permit boundary and permit boundaries change and increase. Ms. Jamison said this amendment allows for mixing zones, but not violation of water quality standards.

Senator Grosfield said Montana has very strict water quality standards.

Senator Weeding closed by saying there is no definition of a mixing zone in SB 401, and it does not address ground water. He said SB 401 as introduced amends current law to make it more lenient.

Vote:

The motion to amend Senate Bill 401 (Exhibit #17) FAILED, 6 members voting yes, 7 voting no, roll call vote.

Motion:

Senator Doherty moved to amend Senate Bill 401 (Exhibit #18).

Discussion:

Senator Doherty explained the amendments.

Senator Kennedy asked Mr. Fraser to comment on Senator Doherty's amendments. Mr. Fraser said there are so many things that cause degradation, he does not believe DHES will ever have the resources to review all of them. He does not think it would be practical to investigate individual septic tanks, drain fields, and other sources considered to be insignificant.

Vote:

The motion to amend Senate Bill 401 (Exhibit #18) FAILED, 4 voting yes, 9 voting no, roll call vote.

Motion:

Senator McClernan moved Senate Bill 401 DO PASS AS AMENDED. (amendments are Exhibits #1 and #2, dated 3/25/93).

Discussion:

Senator Bartlett suggested the Committee remove the fee amendment. Chair Bianchi said the House will probably take care of it. He said the fee must remain in the bill for it to be accepted in the House.

Senator Doherty said he believes SB 401 was introduced because DHES caved in to political pressure, granted special exemptions which were not needed and became involved in law suits. He said SB 401 is covering for the Department and taking a significant step backwards.

Senator Swysgood said the Department's testimony and answers to the Committee's questions had been knowledgeable and he believes DHES will make the concerns of Montanans a priority when they make decisions on nondegradation issues.

Senator Grosfield said he does not view this as getting the Department off the hook. He said he is thinking of what the nondegradation laws will mean to his ranching business if they are not fixed. Senator Grosfield also expressed concern for municipalities and homebuilders putting in septic systems.

Senator Weeding said the law has been in place for 25 years and has not stopped economic development. He added SB 401 is a new act for the mining industry.

Senator Hockett said he agreed with Senator Weeding. He believed

the bill should be killed and current law left in place.

Senator Swift said he is voting for SB 401 to protect the Department.

Vote:

The motion that Senate Bill 401 do pass as amended, CARRIED, 7 voting yes, 6 voting no, roll call vote.

ADJOURNMENT

Adjournment: 9:32 p.m.

Don Bianchi
SENATOR DON BIANCHI, Chair

Sylvia Kinsey for Leanne Kurtz
SYLVIA KINSEY FOR LEANNE KURTZ, Secretary

DB/lk

ROLL CALL

SENATE COMMITTEE Natural Resources DATE 3/26/93

NAME	PRESENT	ABSENT	EXCUSED
Bianchi	✓		
Hockett	✓		
Bartlett	✓		
Doherty	✓		
Grosfield	✓		
Keating	✓		
Kennedy	✓		
McClernan	✓		
Swift	✓		
Swysgood	✓		
Tveit	✓		
Weeding	✓		
Weldon	✓		

ECS

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration Senate Bill No. 401 (first reading copy -- white), respectfully report that Senate Bill No. 401 be amended as follows and as so amended do pass.

Signed: _____
Senator Don Bianchi, Chair

That such amendments read:

1. Title, line 13.
Following: "AUTHORIZATION;"
Insert: "ESTABLISHING A FEE;"

2. Page 1, lines 19 and 20.
Strike: "gives" on line 19
Insert: "requires"
Strike: "authority" on line 20

3. Page 4, line 12.
Strike: "75-3-301"
Insert: "75-5-301"

4. Page 4, line 18.
Following: "submitted"
Insert: "oral or written"

5. Page 8, line 16.
Following: "the"
Strike: "use"
Insert: "granting"

6. Page 8, lines 16 and 17.
Following: "zones" on line 16
Strike: the remainder of line 16 and line 17 in their entirety
Insert: ", requiring that mixing zones granted by the department be specifically identified, and requiring that mixing zones have:"

7. Page 10, line 12.
Page 10, line 20
Following: "economically"
Insert: ", environmentally,"

8. Page 10, line 16.
Following: "waters"
Insert: "and exceeds the costs to society of allowing degradation of high-quality waters"

9. Page 11, line 1.
Following: "."
Insert: "The department's preliminary and final decisions must include:
(a) a statement of the basis for the decision; and
(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation."

10. Page 11, line 4.
Following: "within"
Strike: "20"
Insert: "30"

11. Page 11, lines 7 through 11.
Strike: "Every" on line 7 through "authorization" on line 11
Insert: "The department may issue an authorization to degrade high-quality waters under the provisions of this section for a period not to exceed 5 years. The holder of an authorization may apply for reauthorization under the provisions of this section"

12. Page 12, line 11.
Following: "board"
Strike: "may"
Insert: "shall"

13. Page 12.
Following: line 11
Insert:

"NEW SECTION. Section 6. Fee required. A request to degrade state waters pursuant to 75-5-301 must include a $25,000 nonrefundable fee payable to the department upon application."
Renumber: subsequent sections

14. Page 12, line 13.
Strike: "[Section 5] is"
Insert: "[Sections 5 and 6] are"

15. Page 12, line 15.
Strike: "section 5"
Insert: "sections 5 and 6"

-END-

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 401

DATE 3-26-93 TIME 6:35 A.M. P.M.

NAME	YES	NO
Chairman Bianchi	✓	
Vice Chairman Hockett	✓	
Sen. Bartlett		✓
Sen. Doherty	✓	
Sen. Grosfield		✓
Sen. Keating		✓
Sen. Kennedy		✓
Sen. McClernan		✓
Sen. Swift		✓
Sen. Suzysgood		✓
Sen. Treit		✓
Sen. Weeding	✓	
Sen. Weldon	✓	
	5	8

Leanne Kurtz
SECRETARY

Sen. Bianchi
CHAIR

MOTION: to Amend Ordinance 2 (as Amended)

Eng

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 451

DATE 3/26-93 TIME 7:22 A.M. P.M.

NAME	YES	NO
Chairman Bianchi		✓
Vice Chairman Hackett		✓
Sen. Bartlett		✓
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Keating	✓	
Sen. Kennedy		✓
Sen. McClernan		✓
Sen. Swift	✓	
Sen. Sunysgood	✓	
Sen. Treit	✓	
Sen. Weeding		✓
Sen. Weldon		✓
	5	8

Leanne Kurtz
SECRETARY

Sen. Bianchi
CHAIR

MOTION: Lft action on SB 280 @ L

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources BILL NO. 401

DATE 3/26 TIME 7:44 A.M. P.M.

NAME	YES	NO
Chairman Bianchi		✓
Vice Chairman Hackett		✓
Sen. Bartlett		✓
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Keating	✓	
Sen. Kennedy	✓	
Sen. McClernan	✓	
Sen. Swift	✓	
Sen. Suvsgood	✓	
Sen. Treat	✓	
Sen. Weeding		✓
Sen. Weldon.		✓
	7	6

Leanne Kurtz
SECRETARY

Sen. Bianchi
CHAIR

MOTION: Motion to reconsider action
Mr Clernan

6

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. 401

DATE 3-26-93 TIME 7:47 A.M. P.M.

NAME	YES	NO
Chairman Bianchi		✓
Vice Chairman Hackett		✓
Sen. Bartlett		✓
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Keating	✓	
Sen. Kennedy		✓
Sen. McClernan	✓	
Sen. Swift	✓	
Sen. Sunysgood	✓	
Sen. Treit	✓	
Sen. Weeding		✓
Sen. Weldon.		✓
	6	7

Leanne Kurtz
SECRETARY

Sen. Bianchi
CHAIR

MOTION: Do Pass Amend # 13

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources BILL NO. 401

DATE _____ TIME 1:49 A.M. P.M.

NAME	YES	NO
Chairman Bianchi		✓
Vice Chairman Hackett		✓
Sen. Bartlett		✓
Sen. Doherty		✓
Sen. Grosfield	✓	
Sen. Keating	✓	
Sen. Kennedy		✓
Sen. McClernan	✓	
Sen. Swift	✓	
Sen. Swysgood	✓	
Sen. Treat	✓	
Sen. Weeding		✓
Sen. Weldon.		✓
	6	7

Leanne Kurtz
SECRETARY

Sen. Bianchi
CHAIR

MOTION: Sub Motion Do Pass - McClernan

Eng

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources BILL NO. 401

DATE 3-24 TIME 8:1 A.M. P.M.

NAME	YES	NO
Chairman Bianchi	✓	
Vice Chairman Hockett	✓	
Sen. Bartlett	✓	
Sen. Doherty	✓	
Sen. Grosfield		✓
Sen. Keating		✓
Sen. Kennedy		✓
Sen. McClernan		✓
Sen. Swift		✓
Sen. Sunsgood		✓
Sen. Treat		✓
Sen. Weeding	✓	
Sen. Weldon.	✓	
	6	7

Leanne Kurtz
SECRETARY

Sen. Bianchi
CHAIR

MOTION: Weeding Am. #14

Eng

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources BILL NO. 401

DATE 3-26 TIME 8:-25 A.M. P.M.

NAME	YES	NO
Chairman Bianchi	✓	
Vice Chairman Hackett	✓	
Sen. Bartlett	✓	
Sen. Doherty	✓	
Sen. Grosfield		✓
Sen. Keating		✓
Sen. Kennedy		✓
Sen. McClernan		✓
Sen. Swift		✓
Sen. Sunysgood		✓
Sen. Treat		✓
Sen. Weeding	✓	
Sen. Weldon	✓	
	6	7

Leanne Kurtz
SECRETARY

Sen. Bianchi
CHAIR

MOTION: Weeding Am # 15

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources BILL NO. 401

DATE 3-26 TIME 8:40 A.M. P.M.

NAME	YES	NO
Chairman Bianchi	✓	
Vice Chairman Hackett	✓	
Sen. Bartlett	✓	
Sen. Doherty	✓	
Sen. Grosfield		✓
Sen. Keating		✓
Sen. Kennedy		✓
Sen. McClernan		✓
Sen. Swift		✓
Sen. Suysgood		✓
Sen. Treat		✓
Sen. Weeding	✓	
Sen. Weldon.	✓	
	6	7

Leanne Kurtz
SECRETARY

Sen. Bianchi
CHAIR

MOTION: Weeding # Amend # 16

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources BILL NO. Senate 401

DATE 3-26-93 TIME 8 A.M. (P.M.)

NAME	YES	NO
Bianchi	✓	
Hockett	✓	
Bartlett	✓	
Doherty	✓	
Grosfield		✓
Keating		✓
Kennedy		✓
Swift		✓
Sursgood		✓
McClernan		✓
Tveit		✓
Weeding	✓	
Weldon	✓	
	6	7

Leanne Kurtz
SECRETARY

SEN Bianchi
CHAIR

MOTION: Weeding Amend # 17

Failed

F09

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources Sen BILL NO. 401

DATE 3-26-93 TIME _____ A.M. (P.M.)

NAME	YES	NO
Bianchi	✓	
Hockett		✓
Bartlett		✓
Doherty	✓	
Grosfield		✓
Keating		✓
Kennedy		✓
Swift		✓
Suysood		✓
McClernan		✓
Tveit		✓
Weeding	✓	
Weldon	✓	
	4	9

Leanne Kurtz
SECRETARY

Bianchi
CHAIR

MOTION: amend # 18

failed

Eng

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources Sen BILL NO. 401

DATE 3-26-93 TIME 9:29 A.M. (P.M.)

NAME	YES	NO
Bianchi		✓
Hocket		✓
Bartlett		✓
Doherty		✓
Grosfield	✓	
Keating	✓	
Kennedy	✓	
Swift	✓	
Swysgood	✓	
McClernan	✓	
Tveit	✓	
Weeding		✓
Weldon		✓
	7	6

SECRETARY CHAIR

MOTION: Concur in As Amended

Passed

Eng

EXHIBIT NO. 12
DATE 3-26
H BILL NO. 401

Amendments to Senate Bill No. 401
First Reading Copy

Requested by Sen. Doherty
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 19, 1993

1. Page 10.
Following: line 22
Insert: "(4)(a) The department shall consider the information submitted under subsection (4)(b) in making the determinations required under subsection (3).

(b) A person requesting authorization to degrade high-quality waters under subsection (2) shall submit the following applicable information:

(i) any proposed effluent or discharge limitation;

(ii) a statement of reasons for the proposed effluent or discharge limitation;

(iii) an analysis of alternatives to the proposed effluent or discharge limitation, with justifications for not using alternatives that would result in no degradation or less degradation;

(iv) an analysis of the quality of the proposed discharge;

(v) an analysis of the existing quality of the receiving water, including natural variations and fluctuations in a water quality parameter for which an authorization is requested;

(vi) a complete description of the proposed development for which an authorization is requested;

(vii) the distribution of existing flows and their expected frequency;

(viii) an analysis demonstrating the expected stream or ground water quality for all alternatives;

(ix) an analysis of the impacts of the proposed water quality changes on present and future beneficial uses, including any calculable monetary or other losses to the users;

(x) a showing that the change will not result in violations of water quality standards, preclude existing beneficial uses, or diminish anticipated beneficial uses of the receiving waters;

(xi) a detailed statement of economic or social need for the proposed development;

(xii) a description of alternatives to the proposed development that would equally meet the economic or social need of the development but that would not require water quality degradation;

(xiii) an analysis showing that the public would benefit from the development and lower quality water; and

(xiv) a description and analysis of past, present, and anticipated development in the area that justify a change in water quality and use, including existing or anticipated residential, agricultural, industrial, natural resource, or other development, and that explain in each case why the development is necessary and why maintenance of existing water quality is no longer of optimum benefit to the public."

EXHIBIT NO. 13
DATE 3-26
BILL NO. 401

Amendments to Senate Bill No. 401
First Reading Copy

Requested by Senator McClernan
For the Committee on Natural Resources

Prepared by Paul Sihler
March 26, 1993

1. Page 4, lines 10 through 12.
Following: "state waters" on line 10
Strike: the remainder of lines 10 through 12 in their entirety
Insert: "in which water quality exceeds the level necessary for recreation or necessary to support the propagation of fish, shellfish, and wildlife or waters that are suitable for human consumption. All state waters are high-quality waters unless classified by the board as a class that does not support these uses."

SENATE NATURAL RESOURCES
EXHIBIT NO. 14
DATE 3-26
BILL NO. 401

Amendments to Senate Bill No. 401
First Reading Copy

Requested by Sen. Weeding
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 19, 1993

1. Page 9, line 11.
Strike: "(3)"

2. Page 10, line 2.
Following: "~~quality~~"
Insert: "(1) The department shall require any industrial, public, or private project or development that would constitute a new or increased source of pollution to high-quality waters to provide the degree of waste treatment necessary to maintain that existing high water quality."
Renumber: subsequent subsections

3. Page 10, line 6.
Strike: "(3)"
Insert: "(4)"

4. Page 10, line 9.
Following: "waters"
Insert: "by existing sources"

5. Page 10, lines 12 and 13.
Strike: "to" on line 12 through "project" on line 13

6. Page 10, line 14.
Strike: "proposed"
Following: "project"
Insert: "or activity"
Strike: "will result"
Insert: "results"

SENATE NATURAL RESOURCES
EXHIBIT NO. 15
DATE 3-26-93
BILL NO. 401

Amendments to Senate Bill No. 401
First Reading Copy

Requested by Sen. Weeding
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 23, 1993

1. Page 9, line 11.
Strike: "(3)"

2. Page 10, line 2.
Following: "~~quality.~~"
Insert: "(1) The department shall require:
(a) that any state waters whose existing quality is higher than the established water quality standards be maintained at that high quality unless it has been affirmatively demonstrated to the department that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and
(b) any industrial, public, or private project or development which would constitute a new source of pollution or an increased source of pollution to high-quality waters, referred to in subsection (1)(a), to provide the degree of waste treatment necessary to maintain that existing high water quality."
Renumber: subsequent subsections

3. Page 10, line 6.
Strike: "(3)"
Insert: "(4)"

4. Page 10, lines 12 and 13.
Strike: "to" on line 12 through "project" on line 13

5. Page 10, line 14.
Strike: "proposed"
Following: "project"
Insert: "or activity"
Strike: "will result"
Insert: "results"

SENATE NATURAL RESOURCES
EXHIBIT NO. 16
DATE 3-26-93
BILL NO. SB 401

Amendments to Senate Bill No. 401
First Reading Copy

Requested by Sen. Weeding
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 19, 1993

1. Title, line 11.
Strike: "MIXING ZONES AND"

2. Page 3, lines 1 through 5.
Strike: "It" on line 1 through "minimized." on line 5

3. Page 3, line 21.
Strike: "(5)(c)"
Insert: "(4)(c)"

4. Page 4, line 25 through page 5, line 4.
Strike: subsection (13) in its entirety
Renumber: subsequent subsections

5. Page 8, line 15.
Following: ";"
Insert: "and"

6. Page 8, lines 16 through 20.
Strike: subsection (4) in its entirety
Renumber: subsequent subsection

SENATE NATURAL RESOURCES
EXHIBIT NO. 17
DATE 3-26-
BILL NO. SB 401

Amendments to Senate Bill No. 401
First Reading Copy

Requested by Senator Weeding
For the Committee on Natural Resources

Prepared by Paul Sihler
March 25, 1993

1. Page 5, line 1.
Following: "department"
Strike: "where water quality standards may be exceeded"

2. Page 8, line 17.
Following: "zones"
Insert: "may not violate water quality standards and must"

SENATE NATURAL RESOURCES
EXHIBIT NO. 18
DATE 3-26
BILL NO. 401

Amendments to Senate Bill No. 401
First Reading Copy

Requested by Sen. Doherty
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 23, 1993

strikes nonsignificant impact degradation

1. Page 3, lines 20 and 21.
Strike: "The" on line 20 through "(5)(c)." on line 21

ANDS

2. Page 8, line 25.
Following: "degradation;"
Insert: "and"

3. Page 9, line 6.
Strike: "; and"
Insert: "."

4. Page 9, lines 7 through 11.
Strike: subsection (c) in its entirety

strikes subsection that directs DHES to adopt criteria to determine nonsignificance

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By DICK KNOX, CHAIRMAN, on April 2, 1993, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: Rep. Vivian Brooke

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 401
Executive Action: None

HEARING ON SB 401

Opening Statement by Sponsor:

SEN. HENRY MCCLERNAN, SD 34, Butte, opened testimony on SB 401 on behalf of the Department of Health and Environmental Sciences (DHES). The legislation seeks to place a definition in statute to clarify Article 9 of the Montana constitution on the non-degradation water policy as it applies to agriculture and other industries. He presented a brief history on the evolution of SB 401 and the areas of disagreement prior to this bill: the definition of "high quality water", (with the use and chemistry of that water), and "mixing zones".

Proponents' Testimony:

Bob Robinson, Director, DHES, presented testimony in support of SB 401, noting this legislation was introduced at the department's request. **EXHIBIT 1**

Dan Frazier, Chief, Water Quality Bureau, DHES, spoke in support of the legislation, covering the purpose, policy and philosophy behind the legislation. **EXHIBIT 2**

Shelly Laine, representing Montana League of Cities and Towns, and the Helena City Commission, expressed support for the legislation from both organizations.

John Bloomquist, Montana Stockgrowers Association, expressed his organization's support for SB 401.

Jo Brunner, Executive Director, Montana Water Resources Association, testified in support of the legislation.

Gary Langley, Executive Director, Montana Mining Association, noted this was not industry sponsored legislation and clarification was needed for the state's non-degradation water policy.

Lorna Frank, Montana Farm Bureau, presented testimony in support of the bill. **EXHIBIT 3**

Leo Berry, attorney, representing Entech, stated this legislation was needed to address current inconsistencies in Montana law.

Rex Manuel, Cenex, stated his company's support of the bill and amendments requested by **SEN. MCCLERNAN. EXHIBIT 4**

Don Allen, Montana Wood Products Association, gave testimony in support of SB 401.

Peggy Trenk, Western Environmental Trade Association, stated support for the legislation and offered written testimony. **EXHIBIT 5**

David Owen, Montana Chamber of Commerce, voiced support for the bill.

Opponents' Testimony:

Dennis Olson, Northern Plains Resource Council, presented testimony in opposition to the legislation, noting the major points of disagreement have yet to be resolved. He asked the committee to amend SB 401 down to consensus language reached in the SB 401 subcommittee and leave unresolved issues to EQC to study. **EXHIBITS 6, 7, and 8**

Mona Jamison, attorney, Millelson Land Company, stated this is not an environmental bill, but is one of the most significant

environmental pieces of legislation in recent years. She suggested the DHES had not enforced the laws during the last 20 years, but rather public interest has focused on degradation of high quality water, spurring this issue.

Jim Jensen, Montana Environmental Information Center, spoke in opposition of SB 401. He raised the constitutional requirements in Article 9 Section 1, highlighting the words "maintain" and "improve", and the legislature's responsibility to fulfill the duties and enforce the current law.

J. V. Bennett, Montana Wildlife Federation, expressed support for prior testimony in opposition to SB 401 and stated the Federation believes this legislation will lead to increased pollution of Montana's waters.

Questions From Committee Members and Responses:

In response to questions from **REP. EMILY SWANSON, Mr. Frazier** explained the concept and purpose of mixing zones, as well as the legislative intent to define mixing zones.

REP. JODY BIRD asked **Mr. Frazier** to elaborate on amendment four, dealing with the five year review of authorizations to degrade state waters.

The committee questioned representatives from industry on the impact of the proposed amendments, the legislation's impact on water rights holders, agricultural users, revoking and enforcing permits, the definition of mixing zones, and the definition of degradation.

Closing by Sponsor:

SEN. MCCLERNAN closed on SB 401. He stated amendment number three needed modification and suggested more amendments were possible. He added distrust of DHES hindered this legislation but asked for committee support of the bill.

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

BILL NO.

ROLL CALL DATE 4-2-93

NAME	PRESENT	ABSENT	EXCUSED
Jody Bird	✓		
Vivian Brooke		✓	
Rugg Fagg	✓		
Gary Feland	✓		
Mike Foster	✓		
Bob Gilbert	✓		
Hal Harper	✓		
Scott Orr	✓		
Bob Raney	✓		
Dore Schwinden	✓		
Jay Stovall	✓		
Emily Swanson	✓		
Howard Toole	✓		
Doug Wagner	✓		
Rolph Tunby, Vice Chairman	✓		
Dick Knox, Chairman	✓		

HR:1993

EXH 1
DATE 4-2-93
HB SB 401

Testimony on SB 401
by Bob Robinson, Director DHES
4/2/93

Mr. Chairman and members of the committee, Senate Bill 401 is proposed by the Department of Health and Environmental Sciences to clarify conflicting provisions in the non-degradation policy as it relates to state waters and to insure that the high quality of Montana's waters are protected.

Section 75-3-303 MCA, the non-degradation policy, contains two provisions which conflict in application. (Refer to stricken language in Section 3). Subsection (1) states "that any state waters whose existing quality is higher than the established water quality standard be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated uses of these waters. Subsection (2) requires that any project or development which would constitute a new source of pollution must provide the degree of treatment necessary to maintain that existing high quality water."

So within the same section of law, we have a conflict. Section one contemplates an impact could be approved under certain stringent conditions and section two sets a standard that some interpret to mean there can be no impact.

As a result, the Board of Health, the department, cities and towns, and commercial developers are all in a quandary as to what is

allowed while the environmental community takes the position that no impact is allowable. The result is litigation over permits, as well as some uncertainty by the department as to proper enforcement and issuance of permits.

SB 401 is an attempt to resolve these conflicts. It recognizes that by living in Montana and working here we all have an impact on the water quality but requires that any impact must be minimized by requiring the best technology and practices that are economically and environmentally possible to be implemented before an authorization is issued.

This bill should not be construed as allowing any community or commercial development be given a license to pollute. Just the opposite. No significant degradation will be allowed without an authorization that complies with the stringent standards in the law. In no case can established ambient water quality standards be exceeded outside of the mixing zone.

The bill also establishes process and procedure. An authorization may be issued by DHES if and only if the stringent standards in the act are met, a record of the decision process and conditions are published and the public is involved. It also provides an appeal process to insure redress by an applicant or interested person.

This bill evolved through a series of discussions involving agency, environmental groups and industry through last fall. In the

Senate, a subcommittee chairman directed the people you see here today to reexamine the bill in great detail and arrive at consensus. Over a week involving four meetings and nearly eight hours of discussions, a number of consensus amendments were developed. Most of those were adopted in the Senate. The bill was improved by those amendments. There are a few more amendments that are intended to address continuing problems.

The department is bringing this bill to you to make the non-degradation statute workable, protective and clear and I commit to you that the standards enacted will be enforced in accordance with the language of the law.

EXHIBIT 1
DATE 4-2-93
SB 401

NONDEGRADATION POLICY. The board shall require:

(1)that any state waters whose existing quality is higher than the established water quality standards be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated uses; and (2) any industrial, public or private project or development which would constitute a new source of pollution or an increased source of pollution to high-quality waters, referred to in subsection (1), to provide the degree of waste treatment necessary to maintain that existing high water quality

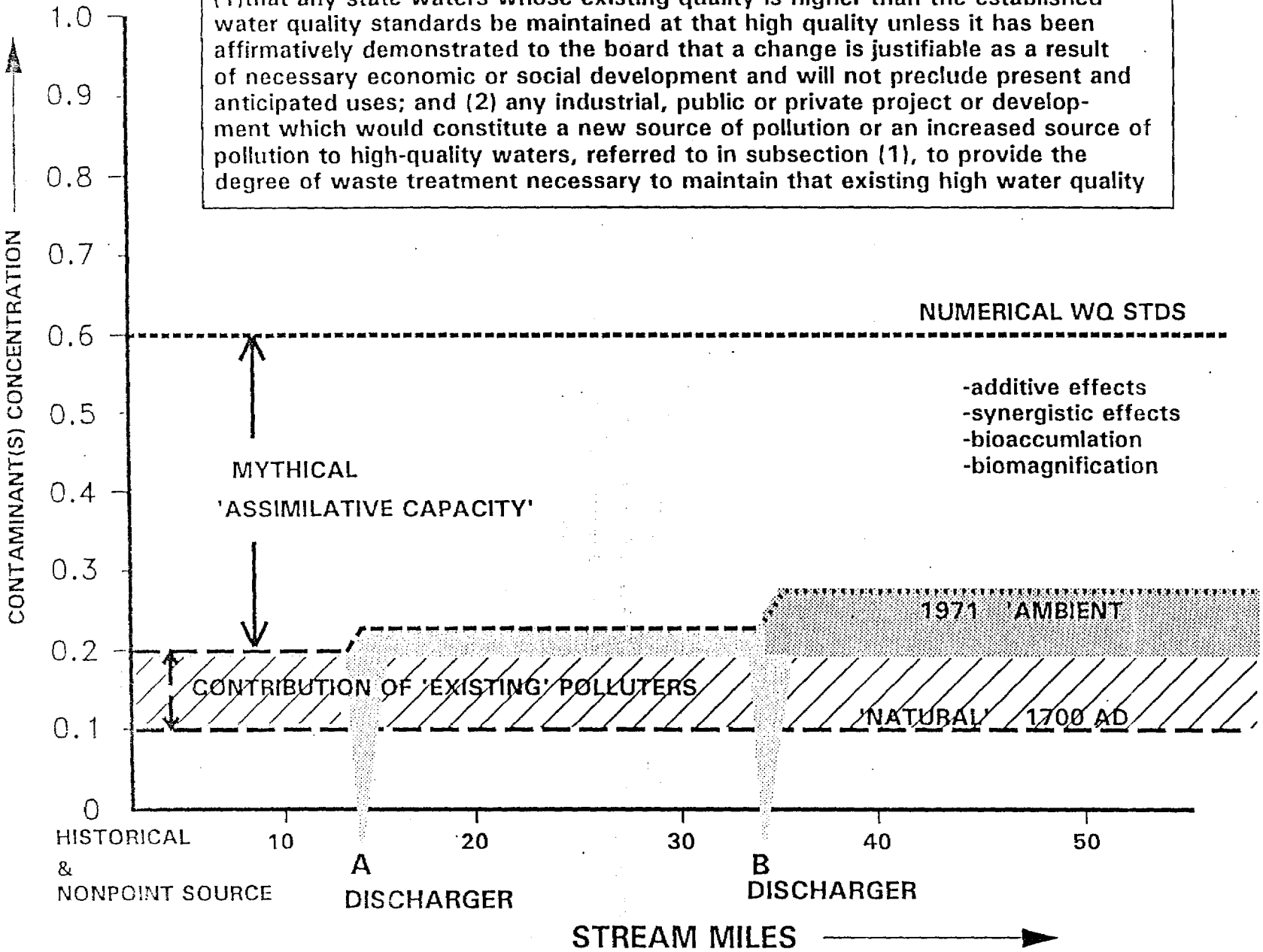


EXHIBIT 2
DATE 4-2-93
HB SB 401

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES'

TESTIMONY ON SB 401

The purpose of the Water Quality Act's nondegradation policy is to protect state waters, both ground waters and surface waters, whose quality is higher than the established standards.

This policy, if implemented, will protect state waters from the increased degradation or worsening of water quality which is the ultimate result of increased development, population growth and the corresponding discharge of an increasing quantity of wastes into our finite water resource.

The philosophy is simple and appropriate. Simply put, it is to ensure that future generations enjoy the same quality waters we now have. It means, however, that we have to rethink our accepted practices of using waters as sewers, as places to dispose of wastes and as a vehicle to transport wastes away from us, which is, unfortunately, toward someone else. Not everyone can live upstream.

The philosophy is simple - implementation of the policy is <u>not</u>. The more you study the policy and consider the many alternatives, and the innumerable possibilities, the more aware you will become of just how difficult implementation really is. The more you think about the consequences of not implementing a stringent nondegradation policy, protective of water quality, the more convinced you will become that implementation is crucial to the future of the state.

The department has worked for the past several months to develop SB 401. The bill is summarized fairly well by lines 3 - 13 on page 2 of the STATEMENT OF INTENT.

> *"In recognition that certain activities promote general welfare and may justify lower water quality in a particular water segment, the legislature intends that degradation be allowed in limited circumstances and under certain conditions. For example, if there is no alternative to a proposed project that does not result in degradation and the project is found to be in the best interests of the state, degradation may be allowed provided that water quality protection practices are implemented to the extent determined to be economically and technologically feasible."*

(25) "Water quality protection practices"

We, in our nondegradation policy review and development over the past 1 1/2 years, decided to put in this definition in an effort to include all activities that could potentially be required as conditions of authorization to degrade state waters. The intent is to apply the "least degrading water quality protection practices economically and technologically feasible" (see 75-5-303 (3) (d)) as a condition of allowing an applicant to degrade state waters.

75-5-301. Classification and standards for state waters.

(4) & (5).

These sections are to give the board the authority to adopt rules governing mixing zones and implementing the nondegradation policy.

(4) a, b & c are intended to minimize the impacts of allowing mixing zones.

(5)(a) allows the board to adopt rules for department review and authorization of degradation.

(5)(b)(i) & (ii) allow for rules to determine; 1. important economic or social development and, 2. weighing the cost/benefit to society.

(5)(c) provides for rules by which the department would determine what activities would result in "nonsignificant" changes.

***75-5-303 Nondegradation policy.** This is the heart of the issue. We have made our best effort to determine what the 2 conflicting subsections really mean and have rewritten the policy to clarify that meaning and expand it in a manner consistent with the rest of the Water Quality Act (WQA).*

(1) This subsection establishes the "bottom line". Existing uses must be protected and maintained; no exceptions. To not maintain all existing uses would cause violations of the water quality standards and this is expressly prohibited by the WQA.

(2) This subsection tells us the only way to degrade high quality waters is to get authorization from the department.

(3) Details when and how degradation can be allowed.

EXHIBIT 2
DATE 4-2-93
SB 401

SUMMARY OF DHES' NONDEGRADATION BILL

75-5-103. Definitions.

(4) "Degradation"

The purpose of applying nondegradation review is not to totally prohibit degradation, but it does require a mandatory evaluation of alternatives that may result in less degradation or no degradation. This parameter-by-parameter approach affords the greatest protection to state waters. It essentially makes all state waters "high quality" for some or all parameters, therefore, applying the policy to all waters and 'writing off' none.The weasel wording here is in reference to changes that are determined to be "nonsignificant". All activities of man cause some degree of water pollution and it is clear that a full nondegradation review cannot be conducted on all of them, therefore, we have to get some of them out of the process in order to make it workable.

(8) "Existing uses"

Existing uses are the bottom line in terms of how far degradation can go (see 75-5-303 (1), new language).

(9) "High quality waters"

Again, as in (3) above, this serves to clearly show all waters are protected by the nondegradation policy with the same caveat regarding nonsignificance.

(11) "Interested person"

The interested person definition limits those who can appeal the department's preliminary decision.

(13) "Mixing zone"

Mixing zones are a part of the current operating practice when permits are issued. When an effluent is discharged to a receiving water of higher quality it can't be mixed instantaneously, therefore, there is a mixing zone. The only way we know of to avoid this is to have the effluent identical in all respects (parameters) to the receiving water. Practically, this is not possible.

EXHIBIT 2
DATE 4-2-93
SB401

(a) a showing would have to be made that no technologically and economically feasible alternatives are available that would not degrade state waters. Obviously economics come into play here. When EPA makes these kinds of determinations they typically look at things which are "generally affordable" to a particular kind of industry or development. If it is generally affordable, it would be required regardless of the individual financial circumstances of the applicant.

(b) a 'balancing' would have to be made showing the benefit to society from allowing the development to go forward exceeds the cost of losing, to the extent authorized by the department, the high quality water. This should be examined, we believe, on a state-wide basis rather than just by looking at the benefit to the local area. The constitution gives ownership of the waters to the state, so this seems appropriate to us.

(Establishing criteria and making these kinds of determinations are, to some extent, subjective in nature and more easily said than done.)

(c) a determination would have to be made that, if the authorization to degrade were granted, existing and anticipated uses would be fully protected.

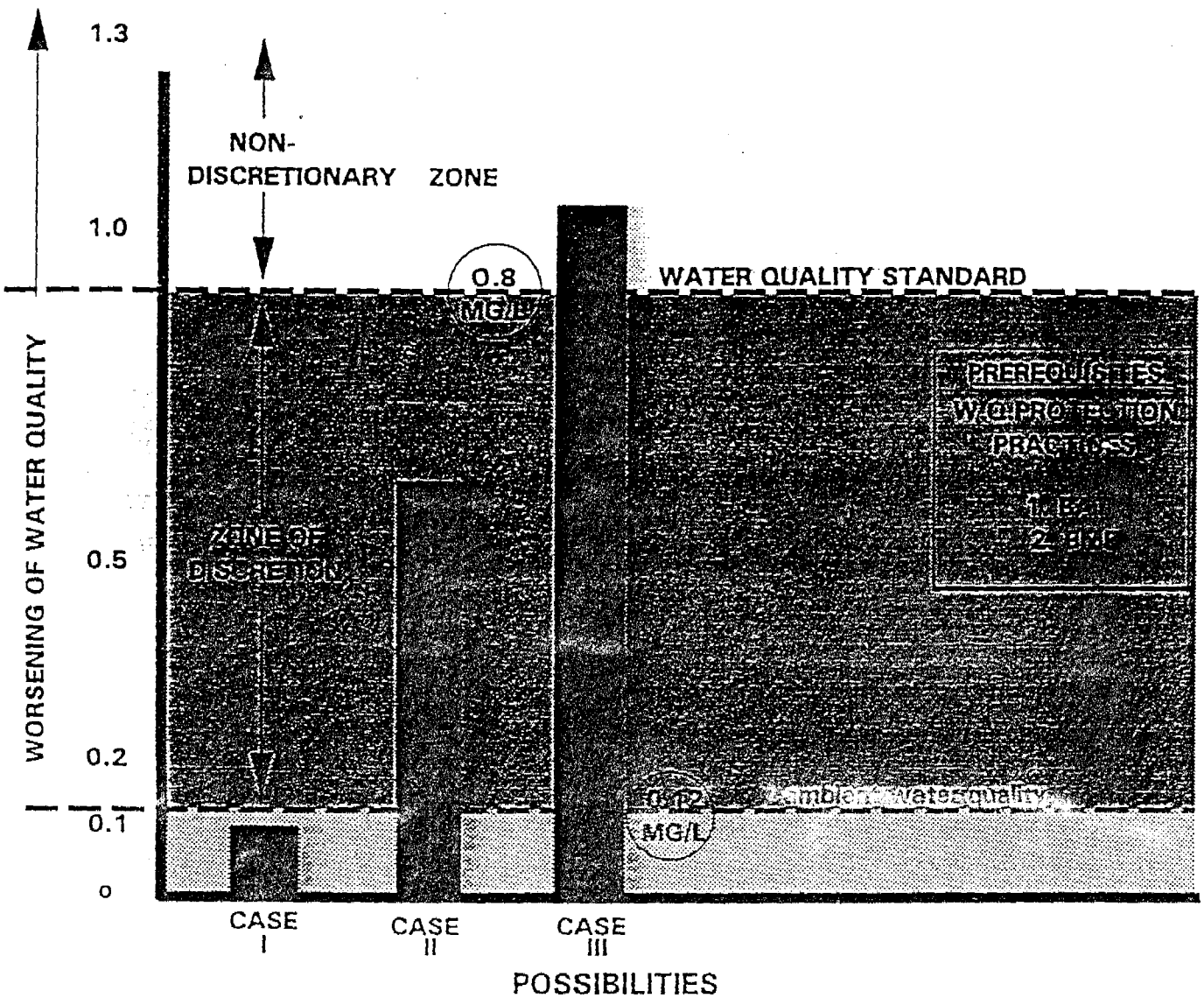
(d) and, as mentioned earlier, the least degrading water quality protection practices determined by the department to be economically and technologically feasible would have to be in place as a condition of authorizing the degradation.

(4) This is a procedural issue.

(5) This section allows challenges to the department's decisions.

(6) This section requires the department to revisit the authorization every five years. It would be possible that, upon a five year review, the department would determine a higher level of technology or some other water quality protection practice would have to be put in place. If uses were shown to be impaired the authorization would have to be withdrawn or conditions would have to be applied which would correct the problems.

75-5-605. Prohibited activity. (c) This clearly makes it prohibited to degrade state waters without getting the authorization pursuant to 75-5-303.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III
POSSIBILITIES

EXHIBIT 2
DATE 4-2-93
SB 401

EXPLANATION OF "POSSIBILITIES" GRAPH

CASE I:

Minimum treatment requirements and best management practices are sufficient to produce an effluent which does not degrade the receiving water.

Nondegradation is not an issue.

CASE II:

Minimum treatment requirements and best management practices are <u>not</u> sufficient to ensure no degradation of the receiving water occurs. The nondegradation review process would be triggered. The applicant would have to:

1. show that the degradation is necessary because there are no economically and technologically feasible alternatives which would result in no degradation;

2. show the proposed project will result in important economic or social development that exceeds the benefit to society of maintaining the existing high-quality waters;

3. the department will have to be satisfied that uses will be protected; and

4. the least degrading water quality protection practices economically and technologically feasible will have to be implemented.

CASE III:

In this example water quality standards are violated after minimum treatment and after water quality protection practices. The activity could not be authorized by the department.

Dan L. Fraser 4-2-93

Dan L. Fraser, P.E., Chief
Water Quality Bureau

EXHIBIT 3
DATE 4-2-93
HB SB 401

MONTANA FARM BUREAU FEDERATION
502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

April 2, 1993

Mr. Chairman, members of the committee, for the record, I am Lorna Frank, representing over 4500 Montana Farm Bureau members throughout the state.

Farm Bureau supports SB-401 because we feel it will clarify the non-degradation water policy in the state as it applies to agriculture and other industries in the state. We feel SB-401 protects water quality and existing uses of water.

It sets up a formula which statutorally recognizes mixing zones. It is logical and makes sense to me that mixing zones be allowed.

Farmers and ranchers want clean water just like everyone else does. But the goal of zero water pollution is not realistic. Other factors such as the cost of pollution abatement, the needs of agriculture, and the need for growth i the state must also be considered.

SB-401 sets up a process whereby new and increased degradation has to undergo review to see if it actually causes degradation.

We feel SB-401 is a good bill and urge this committee to concur. Thank you.

Lorna Frank

Lorna Frank, Lobbyist

EXHIBIT 4
DATE 4-2-93
HB SB 401

Amendments to Senate Bill No. 401
Third Reading Copy

Requested by Senator McClernan
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
April 2, 1993

1. Title, line 14.
Strike: "A FEE"
Insert: "FEES"

2. Page 4, line 14.
Following: "75-5-301."
Insert: "All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life."

3. Page 9, line 16.
Following: "75-5-303(3)."
Insert: "These criteria must be established in a manner that generally:
(i) equates significance with the potential for incremental impacts or cumulative impacts to human health or the environment;
(ii) considers both the quantity and the strength of the pollutant;
(iii) considers the length of time the degradation will occur; and
(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent."

4. Page 12, lines 5 through 10.
Strike: "THE" on line 5 through "SECTION." on line 10
Insert: "Every 5 years, the department shall review authorizations to degrade state waters. If the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization may be appealed to the board."

5. Page 13, lines 12 through 15.
Strike: Section 6 in its entirety
Insert: "NEW SECTION. Section 6. Fees required for nondegradation application, monitoring, and enforcement.
(1) Application fees for authorization to degrade state waters and fees for authorization review under 75-5-303(6) may not exceed the following:
(a) $2,500 for domestic sewage treatment plant

discharges;
(b) $5,000 for industrial discharges; and
(c) $200 per lot for subdivisions reviewed under Title 76, chapter 4.
(2) The minimum annual monitoring and enforcement fee for degradation authorizations is $250 and may not exceed $2,500 per million gallons discharged per day."

6. Page 13.
Following: line 20
Insert: "NEW SECTION. **Section 8. Coordination instruction.** If House Bill No. 388 is passed and approved and if it requires the department of health and environmental sciences to impose and collect fees for authorizations to degrade state waters, then [section 6 of this act] is void."
Renumber: subsequent sections

EXHIBIT 5
DATE 4-2-93
HB SB 401

WETA

Western Environmental Trade Association

TESTIMONY BEFORE THE
HOUSE NATURAL RESOURCES COMMITTEE

SB 401
WATER NONDEGRADATION REVISIONS

April 2, 1993

Mr. Chairman, Members of the Committee, my name is Peggy Trenk and I am speaking today in support of SB 401 on behalf of the members of the Western Environmental Trade Association.

Our association has been working with representatives of various industries and interest groups for more than a year to try to find the most appropriate means to bring some clarity to Montana's nondegradation policy. We got involved, and we've stayed involved, for a couple of reasons.

First, it was clear that while the existing law had yet to be enforced in a consistent manner, it did apply to every activity undertaken in this state, whether it involved municipal water treatment facilities, cattle feedlots and family ranching operations, installation of septic tanks, timber harvests, or even some forms of recreation. We quickly came to understand that without a more rational process for implementing the law, Montana was running a real risk of bringing economic activity to a halt.

The second reason our members made this issue such a priority is that we wanted to make sure all interests were treated equitably under the law. In particular, we wanted to make sure that any changes made in the existing law or regulations would not inadvertently harm one industry while attempting to deal with the concerns of another.

We believe SB 401 addresses many of the problems we've found with the current law and it does so in an equitable manner. It does not repeal the nondegradation law, nor does it give anyone a "license to pollute" as some would have you believe. Rather, it gives all of us, the Water Quality Bureau, the regulated community, and the public a rational process to follow to protect water quality and to protect the economy.

That balance is ultimately what the majority of Montanans want to achieve. Last April we commissioned a poll to explore public concerns with regard to the nondegradation issue.

The results illustrated that the public does support the law, but it also supports the exemption process for those activities that provide economic and social benefit. Those surveyed also made it clear they did not favor regulations imposed under the nondegradation law that could limit or stop many development activities.

EXHIBIT 5
DATE 4-2-93
SB 401

The survey concluded: "Montanans believe the quality of their water is high. They want to keep it that way. They believe there should be a rational process for exemptions to water quality standards that meet social and economic needs while protecting the quality of drinking water and aquatic life and habitat. They do not support a rigid, strict interpretation of the nondegradation standard to the detriment of the state's major industries."

Please vote yes on this important legislation. On behalf of our membership, I'd like to thank you again for the opportunity to testify.

Northern Plains Resource Council

EXHIBIT 6
DATE 4-2-93
HB SB 401

VOTE "NO" ON SB 401

Monday, March 29, 1993

The Department of Health and Environmental Sciences (DHES)--with the vigorous support of the mining industry--has succeeded in passing SB 401 out of the Senate Natural Resources Committee. This bill would abandon a twenty-year policy of protecting, maintaining and improving Montana's water resources, and clear the way for multinational mining companies--and other new or increased pollution sources--to apply for routine exemptions to the the state's "nondegradation policy", which is the heart of Montana's Water Quality Act.

Should Montana start granting routine water quality exemptions at a time when:

* accelerated growth in popular regions of the state--e.g., the Flathead, Gallatin and Paradise Valleys--threatens the very qualities that makes those areas popular?

* several enormous open pit mining projects and expansions threaten some of the most pristine streams left in Montana--streams that are the essential headwaters for the rest of the State?

* Governor Racicot has fought to slash coal impact funding for years of groundwater monitoring in the Eastern Montana coal fields?

* Congress is about to rewrite the federal Clean Water Act to develop and impose best management practices for nonpoint sources of pollution such as agriculture and logging?

* state agencies' budgets are being cut to the bone, even though they cannot adequately enforce environmental protection laws with their current budgets?

While DHES and the mining industry insist that SB 401 is necessary to "clarify" the current law, the bill goes far beyond mere clarification.

REPEALING THE CURRENT NONDEGRADATION POLICY

Instead of merely "clarifying" procedures, as the Department claims, SB 401 totally repeals the Water Quality Act's current nondegradation policy contained in the two paragraphs in section 75-5-303, MCA **[See page 9-10, Section 3, of SB 401]**, and substantially weakens the Water Quality Act. It strikes the current requirement for new or increased sources of pollution **"to provide the degree of waste treatment necessary to maintain...existing high water quality."** SB 401 therefore repeals the current prohibition against new or increased sources obtaining exemptions from the nondegradation policy. But SB 401 doesn't stop there.

On page 4, line 25, SB 401 defines pollution "mixing zones" as areas **"where water quality standards may be exceeded"**. This provision belies the mining industry's deception in the recent debates over exemptions to the nondegradation policy. Time after time, representatives of the mining industry insist that the mining operations applying for exemptions will only result in "minute" amounts of pollution--nothing more than "parts per billion" that are "not detectable"--and that they will not violate water quality standards. Yet here are the mining companies, working closely with the Department to pass SB 401 to get explicit authority to violate water quality standards -- not just to degrade down to standards.

Not to worry, the Department says. We will make sure that the size of the area where water quality standards will be violated is the smallest "practicable" size, and will have the minimum "practicable" effect on water uses **(Page 8, lines 18 & 19)**. This is the same Department that allowed Noranda Minerals to violate water quality standards on Libby Creek in the Cabinet Mountains for a year and half without taking enforcement action. This is the same agency that allowed the Golden Sunlight Mine to spill hundreds of thousands of gallons of cyanide-laced effluent into the groundwater near Whitehall, ruining the water wells of two adjacent ranches, and then expanded Golden Sunlight's "mixing zone" to include the plume of cyanide in the groundwater to make it "legal"--never issuing a violation. Apparently the cyanide plume was determined to be the smallest size "practicable". And this is the same agency that--after ther formal public review--negotiated water degradation exemptions behind closed doors with Chevron/Manville, and Noranda Minerals, that are good for five years beyond the life of both mines. Even if new water treatment technologies become available, neither company will be required to use them, because the Department of Health wrote it into both their exemptions that they don't have to.

The reality is that for 20 years the Department of Health has routinely granted these mixing zones even though the current law provides no authority to do so. The Department of Health refused to cite its statutory authority to grant mixing zones when formally requested to do so by the Environmental Quality Council last year. Now that the Department has been sued over this practice, its response has been to introduce legislation to grant itself the authority after the fact.

104 N. Broadway, Suite 419 Billings, MT 59101-2092 (406)248-1154

The Department believes it must have the discretion to grant mixing zones for new or increased sources of pollution, because, they say, it's impossible to permit such sources without violating water quality standards. Yet Chevron/Manville has stated publicly that it could have treated the discharges for its proposed platinum mine on the East Boulder River to prevent degradation. The company was given the exemption anyway.

These provisions allowing new and increased sources of pollution to violate water quality standards fly directly in the face of the Montana Constitution, which mandates that the "legislature shall provide adequate remedies for the protection of the environmental life support system [which includes water resources] from degradation...."

NONDEGRADATION AND EXISTING SOURCES OF POLLUTION

A major unresolved issue raised by SB 401 is how implementation of the nondegradation policy will affect existing sources of pollution. SB 401 (DHES), **would shift the burden** of maintaining Montana's high water quality **from new or increased point sources** of pollution (such as mines), **to existing point sources** (such as municipalities), and **to existing nonpoint sources** (such as agriculture and logging). This is primarily because a current state rule--which is mandated by the federal Clean Water Act--requires that:

> In allowing such degradation or lower water quality, the board [of Health] **shall assure** that within the basin upstream of the proposed degradation there **shall be achieved the highest statutory and regulatory requirements** for all point and nonpoint sources [of pollution]. [ARM 16.20.702 (2)] [Emphasis added]

The Department of Health has been unable to explain how it will review all upstream sources of pollution, e.g., farmers, ranchers, loggers, municipalities etc., to ensure that they shall achieve best management practices that will meet this requirement. Nevertheless, in order to make it routine for new large-scale mining projects to obtain exemptions to the nondegradation policy, SB 401 would further confuse what's required of existing nonpoint sources of pollution by both federal and state law.

SB 401 would also set the stage for substantial political pressure to be brought to bear on individual existing sources to "clean up their act", so that new large-scale pollution sources--such as municipalities and mines--can get their exemptions. For example, if through obtaining an exemption, Billings could save millions of dollars by not having to treating its increased waste water discharge, the city would likely wield greater political power than the dispersed individual sources upstream. That political power will soon likely be bolstered by some form of mandatory best management practices that will become enforceable after the expected reauthorization of the Clean Water Act in this session of Congress. Passage of SB 401, with language explicitly allowing exemptions for new or increased sources of pollution, would significantly change the Water Quality Act without resolving its full implications for existing point and nonpoint sources.

There is a better way: SJR 29--which has passed the Senate Natural Resources Committee--would place these important, complex and controversial issues into a two-year interim study by the bipartisan Environmental Quality Council (EQC). An EQC study would allow all affected water users a forum through which to participate on these important issues, and would allow for a thorough review and analysis of :

* whether new or increased sources should be allowed to degrade high quality waters or to obtain mixing zones that violate water quality standards;

* how mixing zones can or can not be used in the implementation of the Montana Water Quality Act and still be constitutional;

* how farmers, ranchers, loggers and other existing water users will be affected by the new rule mandating that upstream sources of pollution achieve highest statutory and regulatory requirements before exemptions are granted; and

* upcoming changes in the federal Clean Water Act that may mandate best management practices for nonpoint sources of pollution. An EQC study would give all Montanans the opportunity to participate in the development of best management practices that could positively influence how nonpoint sources of pollution will be regulated at both the federal and the state levels.

--VOTE "NO" ON SB 401--

EXHIBIT 7
DATE 4-2-93
HB SB 401

MSU study finds quality of life, not tax breaks, lures jobs

■ Montana: Rural setting, clean environment are big pluses

By MICHAEL MILSTEIN
Gazette Wyoming Bureau

BOZEMAN — Striking at the conventional wisdom of economic development, a new Montana State University study reveals that tools like tax breaks, free land and low interest loans play a negligible role in luring businesses to Montana and surrounding states.

Most firms coming to or staying in the region are attracted by its pristine environment and rural way of life — and little else. All that gives them pause is Montana's workers compensation fiasco.

To attract new jobs, development boosters should focus on protecting those attributes before expending energy on dubious business-friendly tactics like deregulation and cash incentives, conclude the study's authors, Jerry Johnson and Raymond Rasker, both of Montana State.

That's also critical now since people moving into the region, creating its "New Economy," may not value its qualities as highly as old-timers.

"Communities don't have to buy jobs through tax incentives, they can do it by preserving what they already have," said Johnson, a Montana State professor of political science. "People aren't coming here to get rich, they're coming here to enjoy themselves."

A case-in-point is Larry Johnson, president of ILX Lightwave Corp., a laboratory equipment maker that employs 45 people in Bozeman. He moved from Minnesota to start the business for one reason.

"Lifestyle is the simple answer," said Johnson, who wanted to live within an hour of prime ski and hiking areas. "To tell you the truth, we didn't even look at the tax structure in Montana."

Many have long suspected the region's quality of life attracts new business, but no one knew how important it is. That's why professors Johnson and Rasker did a random survey of almost 500 business owners and managers in Montana's Park, Madison and Gallatin counties.

The as-yet-unpublished study, which had a 95 percent response rate, was funded by the College of Letters and Science and Yellowstone Center for Mountain Environment at Montana State and the private, Montana-based Fanwood Foundation.

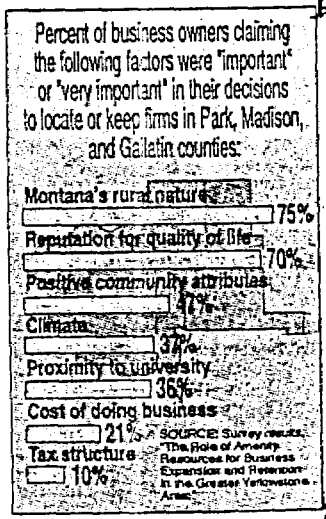
Authors focused on the three Montana counties as an example of a growing rural area. It's part of a region around Yellowstone National Park that has added 66,000 jobs in the last 25 years, 96 percent in sectors besides traditional industries like mining, manufacturing and agriculture.

Over half of the people filling the 15,100 new jobs created there since 1980 are self employed. Many are in small, "footloose" firms that depend on access to computers and telephone lines.

"It's important for Montana to understand what's driving this 'New Economy.' " Johnson said. If it's quality of life, we'd better protect that."

The results, which he thinks hold true for most of Montana and surrounding states, confirmed that quality of life does draw new firms. But some findings were unexpected:

(More on Study, Page 13A)


Percent of business owners claiming the following factors were "important" or "very important" in their decisions to locate or keep firms in Park, Madison, and Gallatin counties:
Montana's rural nature
75%
Reputation for quality of life
70%
Positive community attributes
47%
Climate
37%
Proximity to university
36%
Cost of doing business
21%
Tax structure
10%
SOURCE: Survey results, "The Role of Amenity Resources for Business Expansion and Relocation in the Greater Yellowstone Area"

Continued story

Study

From Page One

■ "Old-timers" here more than five years consider Montana's rural values and environmental quality even more important than do "newcomer" residents of less than five years who were lured by those values.

■ Those surveyed did not link scenic values to public lands here. "They don't think of Forest Service land as scenery," said Johnson. "I don't know who they think owns the scenery or who's going to protect it."

■ Native and non-native residents have started the same types of businesses. Non-natives, for instance, are not creating any more high-tech or boutique gift shops than natives.

■ Tourism, while not really prompting new businesses, helps bring new firms by exposing outsiders to the region's qualities.

The survey proves conventional economic theories — that growth is fueled by raw materials and low labor costs — do not hold for rural areas. Many surveyed said they could tally higher profits in bigger metropolitan areas, but instead came north for more "fuzzy" quality of life reasons that mainstream economists often overlook, Rasker said.

In fact, many business owners got irritated with pollsters from Montana State's Survey Center when they kept asking about economic factors like tax rates and the cost of doing business.

"So much for theory," said Rasker, an adjunct professor at Montana State and resource economist for The Wilderness Society. "If you're going somewhere to make money, you'll probably go somewhere else."

About 60 percent of business owners surveyed actually favored a new sales tax if combined with tax reform.

And fewer than 10 percent of business owners said they used financial inducements like tax breaks, land grants or low interest loans.

Of those surveyed, 86 percent said they would locate their business in Montana again, mostly due to quality of life factors. Those who did not attributed their reluctance to the state's high workers compensation rates more than anything else.

The only differences between the responses of newcomers and old-timers was in how they valued the area's attributes.

In every case, established residents ranked factors like "Quality environment," "Scenic beauty," "Low crime rate" and "Rural setting" as more important than newcomers did. That's likely because many of the newcomers, those here less than five years, moved from crowded urban zones where "anything would be an improvement," Johnson surmised.

It may become more difficult to protect the region's unique values if newcomers "are willing to settle for lower quality," he said.

Still, the best way to fuel economic growth is "to protect our cultural values" — whether it be maintaining open space for agriculture, providing recreational opportunities or keeping historic downtowns from losing to malls, Rasker said. "That's really what the chambers of commerce should be looking at."

Business boosters also must remember that local values are even more important to keeping long-time businesses. Sacrificing those qualities by overdeveloping an area could backfire.

"It's a real fine line," said Johnson. "How much business recruitment can you do before you start to foul your own nest?"

EXHIBIT 8
DATE 4-2-93
HB SB 401

Tawney & Dayton

Attorneys At Law

Henry R. Crane (1911-1993)
Peter S. Dayton (ret.)
Grant D. Parker (ret. W.O.)
Philip D. Tawney (ret.)

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Telephone: (406) 542-5000
In Montana: (800) 823-6226
FAX: (406) 542-8920

March 9, 1993

Senate Natural Resources Committee
Nondegradation Subcommittee
Capitol Station
Helena, Montana 59620

RE: SB 401 - Weakening Montana's Nondegradation Policy

Dear Subcommittee Members:

I represent the Northern Plains Resource Council, an agricultural-conservation organization that has been actively involved in efforts to preserve and protect Montana's resources and quality of life for over twenty years. My comments address significant legal issues raised by the proposed legislation to weaken Montana's nondegradation statute. In short, the Montana Constitution expressly prohibits the Montana Legislature from passing any legislation which allows degradation of our essential life support system, including water. Mont. Const. Article IX, Section 1.

Montana's nondegradation policy was adopted in substantially its present form, in 1971. The statute currently provides as follows:

> "75-5-303. Nondegradation policy. <u>The board shall require</u>:
>
> (1) that any state waters whose existing quality is higher than the established water quality standards be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and
> (2) any industrial, public, or private project or development which would constitute <u>a new source of pollution or an increased source of pollution to high-quality waters</u>, referred to in subsection (1), <u>to provide the degree of waste treatment necessary to maintain that existing high water quality</u>." [Emphasis added.]

This statutory provision requires new or expanded sources of pollution to provide waste treatment to maintain the existing

high quality of Montana's waters.

In 1972, Montana adopted its new constitution. The section requiring the Legislature to prevent degradation of Montana's air, land, and water states as follows:

> Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.
> (2) The legislature shall provide for the administration and enforcement of this duty.
> (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. [Emphasis added.]

Mont. Const. Article IX, Section 1. The framers of our Constitution distinguished "natural resources" which cannot be unreasonably depleted, from our "environmental life support system" which cannot be degraded.

The history of the Constitutional Convention supports the position that the Montana Legislature cannot provide for the degradation of Montana waters. The comments on the majority proposal clarify that this section applies to water, and that Montana's waters cannot be degraded:

> Subsection (3) mandates the legislature to provide adequate remedies to protect the environmental life support system from degradation. The committee intentionally avoided definitions to preclude being restrictive and the term "environmental life support system" is all encompassing including, but not limited to air, water, and land and whatever interpretation is afforded this phase by the legislature and courts; there is no question that it cannot be degraded. [Emphasis added.]

Vol. II, Proceedings of Constitutional Convention of State of Montana, pg. 555 (1971-1972). This prohibition on degradation is further supported by comments of Delate C.B. McNeil from Polson, who stated that, "our intention was to permit no degradation of the present environment of Montana and affirmatively require enhancement of what we have now." *Vol. IV, Proceedings of Constitutional Convention of State of Montana, pg. 1205 (1971-1972).*

EXHIBIT 8
DATE 4-2-93
SB 401

The Health Department bill sponsored by Senator McLernan clearly provides for the degradation of Montana's waters in violation of Montana Constitution.

Rather than precipitously rush to amend a twenty-year old statute, and risk raising serious constitutional questions, we recommend that the nondegradation issue be referred to the Environmental Quality Commission for an interim study.

Please feel free to call me if any of you have additional questions regarding this matter.

Sincerely,

TAWNEY & DAYTON

Grant D. Parker

GDP/tih

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. SB 401

DATE 4/7/93 SPONSOR(S) SEN. McCLERNAN

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Jim MacNeil	MT. Coal Council	HB 401		✓
REX MANUEL	CENEX	SB 401		✓
Shelly LAine	City of Helena Mt League of Cities/Towns	SB 401		✓
Lorna Frank	Mt. Farm Bureau	SB 401		✓
Ed Waller	MEG	SB 436		✓
Lois Batt	MEA	4		✓
Peggy Trenk	WETA	SB 401		✓
Nancy LeCaptain	H			
J.V. Bennett	MT. Wildlife Fed.	SB 401	✓	
Mona Jamison	Millerson Land Co	SB 401	✓	
Dan Hall	CHES	SB 401		X
David Owen	mt chamber of comm.	401		✓
Dennis OCSO4	NPRC	SB 401	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. 401

DATE 3/12/93 SPONSOR(S) SEN. MCCLERNAN

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Russ Ritter	MRA	401		X
Bob Williams	Mont Mines	401		✓
Jim Jensen	MEIC	401	✓	
Janelle Fallan	MT Petroleum	401		X
Leo Berry	Entech			✓
Don Allen	Mt. Wood Products Assn	401		X
Joe Brooks	MARA	401		✓
John Bloomquist	Mt. Stockgrowers	401	✓	✓
Peggy Marie Keller	Rosebud Cattle Co. Rancher			✓
Mary A Langley	MONTANA MINING ASSN.	401		✓
PAMELA LANGLEY	MONTANA AGRICULTURE BUSINESS ASSN.	401		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

an unincorporated municipality was also added on page 9. The motion carried unanimously.

Motion/Vote: **REP. GILBERT MOVED HB 692 BE CONCURRED IN AS AMENDED.** The motion carried on a 14 to 2 roll call vote.

EXHIBIT 6 was presented for the record.

EXECUTIVE ACTION ON SB 389

Motion/Vote: **REP. FOSTER MOVED TO TABLE SB 389.** The motion carried unanimously.

EXECUTIVE ACTION ON SB 401

Motion: **REP. ORR MOVED SB 401 BE CONCURRED IN** and moved amendments to the bill. **EXHIBIT 7**

Discussion: The Department of Natural Resources and Conservation (DNRC) commented on the amendments.

Vote: Motion to amend SB 401 carried.

Motion/Vote: **REP. TOOLE** moved to amend SB 401. **EXHIBIT 8** Motion failed on an 8 to 8 tie vote.

Motion: **REP. SWANSON** moved to amend SB 401. **EXHIBIT 9**

Discussion: The committee discussed the proposed amendment, HB 571, short term water degradation, and the review process.

Vote: **TO AMEND SB 401 PER EXHIBIT 9.** Motion failed on a 9 to 7 voice vote.

Motion/Vote: **REP. TOOLE** moved to amend SB 401. **EXHIBIT 10** Motion failed.

Motion/Vote: **REP. TOOLE** moved to amend the bill. **EXHIBIT 11** Motion failed.

Discussion: The committee discussed concerns with the bill, SJR 29, mounting water quality violations, and departmental commitment.

Motion/Vote: **REP. HARPER** moved to strike section 9. The motion failed on a 10 to 6 vote.

Motion/Vote: **MOTION THAT SB 401 BE CONCURRED IN AS AMENDED.** The motion carried on a 10 to 6 vote.

HOUSE OF REPRESENTATIVES

Natural Resources COMMITTEE

BILL NO.

ROLL CALL DATE 4-12-93

NAME	PRESENT	ABSENT	EXCUSED
Jody Bird	✓		
Vivian Brooke		✓	
Rugg Fagg	✓		
Gary Feland	✓		
Mike Foster	✓		
Bob Gilbert	✓		
Hal Harper	✓		
Scott Orr	✓		
Bob Raney	✓		
Dore Schwinden		✓	
Jay Stovall	✓		
Emily Swanson	✓		
Howard Toole	✓		
Doug Wagner	✓		
Rolph Tunby, Vice Chairman	✓		
Dick Knox, Chairman	✓		

HR:1993

HOUSE STANDING COMMITTEE REPORT

April 13, 1993

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 401 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Dick Knox, Chair

And, that such amendments read: Carried by: Rep. Orr

1. Title, line 14.
Strike: "A FEE"
Insert: "FEES"

2. Page 4, line 14.
Following: "75-5-301."
Insert: "All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life."

3. Page 9, line 16.
Following: "75-5-303(3)."
Insert: "These criteria must be established in a manner that generally:
(i) equates significance with the potential for harm to human health or the environment;
(ii) considers both the quantity and the strength of the pollutant;
(iii) considers the length of time the degradation will occur; and
(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent."

4. Page 12, lines 5 through 10.
Strike: "THE" on line 5 through "SECTION." on line 10
Insert: "Every 5 years, the department shall review authorizations to degrade state waters. To enable the department to adequately review authorizations as required

Committee Vote:
Yes , No ___.

under this section, the authorization holder shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the latest department review. The specific revised information required must be determined by the department. If, based on the review, the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization may be appealed to the board."

5. Page 13, lines 12 through 15.
Strike: Section 6 in its entirety
Insert: "NEW SECTION. Section 6. Fees required for nondegradation application, monitoring, and enforcement.
(1) Application fees for authorization to degrade state waters and fees for authorization review under 75-5-303(6) may not exceed the following:
(a) $2,500 for domestic sewage treatment plant discharges;
(b) $5,000 for industrial discharges; and
(c) $200 per lot for subdivisions reviewed under Title 76, chapter 4.
(2) The minimum annual monitoring and enforcement fee for degradation authorizations is $250 and may not exceed $2,500 per million gallons discharged per day."

6. Page 13.
Following: line 20
Insert: "NEW SECTION. Section 8. Coordination instruction. If House Bill No. 388 is passed and approved and if it requires the department of health and environmental sciences to impose and collect fees for authorizations to degrade state waters, then [section 6 of this act] is void.

NEW SECTION. Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

-END-

EXHIBIT 7
DATE 4-12-93
~~HB~~ SB 401

Amendments to Senate Bill No. 401
Third Reading Copy

Requested by Rep. Orr
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
April 6, 1993

1. Title, line 14.
Strike: "A FEE"
Insert: "FEES"

2. Page 4, line 14.
Following: "75-5-301."
Insert: "All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life."

3. Page 9, line 16.
Following: "75-5-303(3)."
Insert: "These criteria must be established in a manner that generally:
(i) equates significance with the potential for harm to human health or the environment;
(ii) considers both the quantity and the strength of the pollutant;
(iii) considers the length of time the degradation will occur; and
(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent."

4. Page 12, lines 5 through 10.
Strike: "THE" on line 5 through "SECTION." on line 10
Insert: "Every 5 years, the department shall review authorizations to degrade state waters. To enable the department to adequately review authorizations as required under this section, the authorization holder shall revise the initial authorization application no sooner than 3 1/2 years and no later than 4 years after the date of the authorization or the date of the latest department review. The specific revised information required must be determined by the department. If, based on the review, the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization may be appealed to the board."

5. Page 13, lines 12 through 15.
Strike: Section 6 in its entirety

Insert: "NEW SECTION. **Section 6. Fees required for nondegradation application, monitoring, and enforcement.** (1) Application fees for authorization to degrade state waters and fees for authorization review under 75-5-303(6) may not exceed the following:
(a) $2,500 for domestic sewage treatment plant discharges;
(b) $5,000 for industrial discharges; and
(c) $200 per lot for subdivisions reviewed under Title 76, chapter 4.
(2) The minimum annual monitoring and enforcement fee for degradation authorizations is $250 and may not exceed $2,500 per million gallons discharged per day."

6. Page 13.
Following: line 20
Insert: "NEW SECTION. **Section 8. Coordination instruction.** If House Bill No. 388 is passed and approved and if it requires the department of health and environmental sciences to impose and collect fees for authorizations to degrade state waters, then [section 6 of this act] is void.

NEW SECTION. **Section 9. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."
Renumber: subsequent sections

DRAFT

SENATE
Amendments to ~~House~~ Bill No. 401
Third Reading Copy

EXHIBIT 8
DATE 4-12-93
~~HB~~ SB 401

Requested by Rep. Toole
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
April 7, 1993

1. Page 8, line 25.
Strike: "and"

2. Page 9, line 16.
Following: 75-5-303(3)
Insert: "; and (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, establish presumptive bases for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3)."

DRAFT

EXHIBIT 9
DATE 4-12-93
HB SB 401

Amendments to Senate Bill No. 401
Second Reading Copy

Requested by Rep. Swanson
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
April 6, 1993

1. Page 9, line 16.
Following: "75-5-303(3)."
Insert: "These criteria must be established in a manner that does not include activities or classes of activities [, unless authorized under [section 2 of House Bill No. 571],] that violate water quality standards and in a manner that generally:
(i) equates significance with the potential for incremental impacts or cumulative impacts to human health or the environment;
(ii) considers both the quantity and the strength of the pollutant;
(iii) considers the length of time the degradation will occur; and
(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent."

2. Page 13.
Following: line 20
Insert: "
NEW SECTION. **Section 8. Coordination instruction.** If House Bill No. 571 is not passed and approved with language that authorizes the department of health and environmental sciences to grant short-term exemptions from the water quality standards, then the bracketed language in 75-5-301(5)(c), as amended by [this act], is void."
Renumber: subsequent sections

DRAFT

Amendments to Senate Bill No. 401
Third Reading Copy

EXHIBIT 10
DATE 4-12-93
~~HB~~ SB 401

Requested by Rep. Toole
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
April 6, 1993

1. Page 13.
Following: line 8
Insert: "
NEW SECTION. **Section 5. Mixing zone guidelines.** The department may deny a mixing zone if necessary to protect beneficial uses. The department must carefully consider the appropriateness and extent of a mixing zones where the discharge contains carcinogens or toxins that bioaccumulate or biomagnify.
Renumber: subsequent sections

2. Page 13, lines 17 and 20.
Following: "5"
Strike: "AND 6"
Insert: "through 7"

DRAFT

Amendments to Senate Bill No. 401
Third Reading Copy

EXHIBIT 11
DATE 4-12-93
HB SB 401

Requested by Rep. Toole
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
April 6, 1993

1. Page 8, line 21.
Following: "IDENTIFIED,"
Insert: "complying with the requirements of [section 5],"

2. Page 13.
Following: line 8
Insert: "

NEW SECTION. **Section 5. Mixing zone requirements.** (1) Mixing zones granted by the department must comply with the requirements of this section.

(2) Mixing zones may not restrict passage of aquatic life. Pollutants in a mixing zone may not create objectionable bottom deposits.

(3) Chronic toxicity may not occur in a mixing zone.

(4) For discharges to lakes or reservoirs, the area of a mixing zones that exceeds water quality standards may not extend more than 25 feet in any direction from the point of discharge. No more than 5% of the volume of a lake or reservoir may be allocated for the sum of mixing zones in that water body.

(5) To ensure rapid mixing, for mixing zones that involve a discharge to a river or stream the area of the mixing zone that exceeds water quality standards may not exceed 250 feet from the point of discharge or be located less than 500 feet from an adjacent mixing zone. Mixing zones for discharges to rivers or streams must be based on a designated volume or percentage of stream flow, as determined by the board."
Renumber: subsequent sections

3. Page 13, lines 17 and 20.
Following: "5"
Strike: "AND 6"
Insert: "through 7"